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In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-631

GEORGE ALDER,
et al.,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and Rehabilitation,
Dade County, Florida, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MIAMI REVIEW — 371-4853 — 377-3721

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners, George Alder, G. A. Alderson, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Arthur M. Bobrick, Glenn Campbell, Jr., Bradford Cochrane, Lester Cole, Chester Culbreath, Pat Dalton, Paul Discoli, O. K. Duke, Jr., J. W. Ewalt, Bill Forrest, James L. Frey, Francis Fulginiti, George L. Fulton, Paul Haenel, Earl Hall, A. L. Hauck, Marc Hill,

C. R. Holzschuher, Dick Jordan, Charles M. Leavy, James E. McKeehan, C. O. Means, Charles B. Medlen, Robert E. Mendheim, Stephan Merlock, E. L. Moses, Al Moskovitz, Robert F. Niemeyer, J. E. O'Donnell, Duane Randle, Ray Randle, H. N. Simmons, Wayne Strong, F. B. Stutz, Jack Wilson, Florida Greyhound Owners & Breeders Association, Inc., a Florida corporation, pray that a writ of certiorari issue to the Supreme Court of Florida and that this Honorable Court review and reverse the judgment of that court against Petitioners and in favor of Respondents, Jack Sandstrom, Director, Department of Corrections and Rehabilitation, Dade County, Florida; the State of Florida, West Flagler Associates, Limited, a Florida limited partnership, Metropolitan Dade County, Florida, Joe LaCroix, Joseph Villella, National Greyhound Association, an unincorporated association, and Robert E. Thomas, member, officer and director of National Greyhound Association,[1] Respondents.

OPINIONS BELOW

The Florida Supreme Court rendered its opinion on July 21, 1975, its opinion denying rehearing on July 29, 1975, its opinion consolidating appeals on July 17, 1975, and its opinion temporarily releasing petitioners on writ of habeas corpus on July 10, 1975. None of these opinions has been published officially. These opinions, together with the orders of the trial and appellate courts, are appended to this petition.

---

[1]Respondents Joe LaCroix, Joseph Villella, National Greyhound Association, and Robert E. Thomas were defendants below and were aligned with present petitioners in the initial trial court proceeding. They are not now represented by undersigned counsel and their position with reference to this petition is not known.

JURISDICTION

Petitioners seek review of a judgment of the Florida Supreme Court rendered July 21, 1975, which became final by denial of rehearing on July 29, 1975. That judgment discharged a writ of habeas corpus which the Florida Supreme Court had issued on July 10, 1975. By virtue of that Court's pre-emption of the jurisdiction of the Court of Appeal, Third District of Florida, over an interlocutory appeal, which was then consolidated with its discharge of the writ of habeas corpus, the Florida Supreme Court also affirmed the trial court's entry of the preliminary mandatory injunction. The writ of certiorari therefore runs to the Florida Supreme Court. Petitioners invoke this Court's jurisdiction under Title 28 United States Code, Section 1257(3). The judgment of the Florida Supreme Court violates petitioners' rights under the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

QUESTIONS PRESENTED FOR REVIEW

1. Whether entry of a preliminary mandatory injunction compelling specific performance of personal services contracts deprives petitioners of their Thirteenth Amendment guarantees against involuntary servitude?

2. Whether entry of a preliminary mandatory injunction based upon evidentiary hearings held ex parte after removal to and prior to remand from, the federal district court, deprives petitioners of their Fifth and Fourteenth Amendment rights to due process?

3. Whether petitioners' incarceration for contempt of a state court order rendered without subject matter or in personam jurisdiction deprives petitioners of their Fifth, Thirteenth and Fourteenth Amendment rights to due process and not to be subjected to involuntary servitude?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Amendment V:

"No person shall . . . be deprived of life, liberty or property without due process of law. . . ."

Amendment XIII:

"Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States. . . ."

Amendment XIV, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law. . . ."

Title 28 United States Code, Section 1446(e):

> "Promptly after the filing of such petition [for removal] and bond the . . . defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

STATEMENT OF THE CASE

Factual background; pari-mutuel greyhound racing in Florida.

West Flagler is a state licensed pari-mutuel wagering track accorded a time-interval, geographical monopoly for greyhound racing. It is the largest of several such tracks in Florida. During its two racing seasons, it is, as it advertises "the only game in town."

Many of petitioners (most especially those 18 who were incarcerated below) are individuals who own or lease, train, care for and maintain registered racing greyhounds. Thirty of petitioners are generally acknowledged to be racing the fastest, most successful greyhounds. Their greyhounds win more races, and therefore more "purses", than the more than one hundred other kennels licensed to race in Florida. Those thirty petitioners were, directly or indirectly, the signers of West Flagler's prepared, printed form "contract" styled "Flagler Kennel Club Booking Application and Contract." None of the terms of such contracts were negotiated, and West Flagler had established the practice of staggering the ending dates of such con-

tracts into three groups of the kennel owners. By regulation, the State of Florida deducts 17.4% of each dollar wagered at a track, extracts 7.4% as a tax, and allots 10% total for the track. No rules or regulations establish the percentage of the 10% which goes to kennel owners, but West Flagler, in virtually identical alignment with all other South Florida operators, has unilaterally imposed a 2% allocation to kennels which win, place or show in various races.

Nearly all of the kennel owners who are petitioners in this cause work personally, full-time in the racing, training and maintaining of greyhounds. Some employ helpers called trainers or handlers. Some are their own trainers and handlers. Many engage their entire family year-round in the kennel operation. As the cost of living and of doing business had been increasing, the kennel owners as a group had found it increasingly difficult to survive financially on the small purses allotted to them by track operators. Through their association (the "FGOBA") and by the appointment of a committee of negotiators, petitioners had dealt directly with two smaller track operators in northern Florida and had obtained by such bargaining substantial increases in the purse structure.

Through their negotiating committee, the 30 kennel owners who raced at West Flagler had been negotiating directly with West Flagler for weeks prior to the July 3, 1975 beginning of West Flagler's summer racing meet.

Simultaneous state and federal suits by West Flagler.

On June 30, 1975, West Flagler sued petitioners and others in the state trial court in Miami and in the District

Court for the Southern District of Florida. The suits arose out of the same occurrences and transactions. But the state action purported to be based upon state antitrust law violations and breach of the West Flagler-created "contracts". Though West Flagler had been negotiating directly with an attorney for petitioners, it obtained upon the filing of the complaint, ex parte and without notice, a temporary injunction. That order, signed before any attempts to serve the complaint were commenced, purported to be findings "from the sworn complaint and evidence" that (a) the trial court had jurisdiction of the subject matter and the parties and notice would have provoked the damage sought to be avoided; (b) the contracts "involve special and unique chattel and product which cannot be readily supplanted or replaced" and West Flagler would have no adequate remedy at law; and ruling that (c) the kennel owners were not to remove their greyhounds from South Florida; (d) the injunction was effective immediately; and (e) delivery of the order upon the attorney who had been negotiating for the kennel owners would ipso facto constitute "good and sufficient service" upon all kennel owners.

Having thus summarily determined that service had been effected, the court scheduled a hearing on a motion for a broader mandatory injunction for 3 o'clock on the afternoon of July 3rd.

Summary, ex parte dispositions in favor of respondents after removal and prior to remand.

At approximately 2 o'clock on the afternoon of July 3rd, petitioners perfected removal of the state court cause to the Federal District Court. All appropriate papers were filed and notices given and counsel notified the trial judge

shortly before 3 o'clock that the case had been removed. The trial judge indicated that counsel should nevertheless appear at the 3 o'clock hearing. Counsel for these petitioners appeared at that hearing, announced in open court that the case had been removed, requested and received permission to depart lest there be a claimed waiver of their removal rights, and departed.

Despite the absolute lack of any jurisdiction to proceed further, respondents offered and the trial court received testimony and evidence on the motion for mandatory injunction. Other counsel for respondents appeared ex parte before the chief judge of the District Court for the Southern District of Florida; they requested an emergency hearing concerning the removal petition. The district judge before whom the case had fallen was absent. Another district judge concluded a trial, came off the bench, reviewed the removal papers for approximately 20 minutes, and "sua sponte" remanded the cause to the Florida state court. That non-appealable order of remand was signed at 5:55 P.M. on July 3rd.

Fifteen minutes later, without notice, without hearing and based upon the testimony and evidence which had been received prior to the remand and outside the presence of counsel for petitioners, the state trial court entered its "Order Granting Temporary Mandatory Injunction". That order made the following recitations:

(a) The court had jurisdiction of the subject matter and the parties and "the equities are with plaintiff and against the defendants."

(b) The individual kennel owners had written contracts to furnish dogs for the July 3, 1975 racing meet; the State of Florida has a financial interest in the conduct of the meet; plaintiff would be irreparably damaged by the kennel owners' non-performance and "the economy of this area is materially affected."

(c) The contracts involve special and unique chattels not replaceable; denial of the mandatory injunction would irreparably damage West Flagler; and "the balance of convenience and public interest" compelled a ruling for West Flagler.

(d) The application for temporary mandatory injunction was granted; the 30 contracting kennel owners were ordered to supply the dogs and "comply" with their contracts.

(e) The 30 kennel owners were required to file their entries by the following morning, July 4th at 10:00 A.M.

(f) Upon the kennel owners' failure to file entries, their dogs (most of which were already located at a facility owned in part by West Flagler) were to be sequestered and a receiver would be appointed to control, enter and race such dogs, his costs and fees to be assessed against the kennel owners.

(g) The kennel owners were given eight days to answer the state court complaint.

(h) The kennel owners were enjoined from removing any greyhound from the West Flagler facility.

Again, ex parte and without hearing or notice to kennel owners, the trial court on July 4th entered its "Amendment to Order Appointing Receiver" as follows:

(a) reciting that the July 3rd order "has not been complied with";

(b) authorizing the receiver to employ personnel to perform the entry and racing duties and to borrow money therefor, such borrowed monies to be a first lien upon the greyhounds;

(c) ordering the kennel owners' employees (none of whom had been named or served in the complaint) to work with the receiver or face contempt citations;

(d) ordering veterinarians (also not named or served) to continue to treat the dogs and have a lien upon the dogs for their services;

(e) ordering police officials "to cooperate with the receiver and to take whatever action is necessary to prevent violence"; and

(f) ordering the receiver to appear before the court on July 7th and report what had happened.

Contempt proceedings; summary incarceration.

On July 5th, the trial court acknowledged the receiver's inability even to keep the dogs healthy, much less race them. It returned custody to the kennel owners.

Despite the fact that the complaint had not been served upon more than a handful of the kennel owners and despite the fact that no hearing on the merits attended by the kennel owners had ever been held, a "contempt notice" was handed to counsel who had removed the case to federal court. That contempt notice set hearing for noon, Monday, July 7th. On that morning, the petitioners who had been served moved to dissolve the injunction and dismiss the complaint. They pointed out the personal services nature of the contracts. They cited case law indicating that mandatory injunctions for such contracts cannot be entered. They pointed out the lack of subject matter jurisdiction and that the same cause of action was subsumed in the pending federal antitrust case in the Federal District Court. Several moved to quash service of process or dismiss for lack of in personam jurisdiction. All petitioners who had been served demanded jury trial. Also in that morning, the petitioners noticed an emergency interlocutory appeal and moved to stay the proceedings pending the appeal. All petitioners' motions were summarily denied by the trial court, who refused even to hear testimony concerning petitioners' defenses and contentions. The trial court did, however, acknowledge the personal service nature of the contracts.

The trial court commenced evidentiary hearings solely on the issue of whether the individual defendants had executed the booking applications. It rejected all petitioners' arguments concerning the validity of the July 3rd order and the unconstitutionality of compelling involuntary servitude and orally announced late in the evening of July 7th that the petitioners whose health would permit it would be incarcerated the following day.

Emergency interlocutory appeals.

The appellate court denied immediate relief, but expedited consideration of the interlocutory appeal, requiring the intervenor State of Florida to file its brief by July 14th.

On July 8th, the trial court held 18 of petitioners in contempt of court, fined them $7500 each (without taking testimony as to their individual ability to pay and without according them their demanded jury trial), and ordered them incarcerated upon their failure to pay the fine and comply with the contracts. It also imposed incremental fines of $2500 per man for each additional day of noncompliance with the order to perform the personal services. On July 8th, the "Flagler 18" (ages 27 to 71) were jailed.

Grant of habeas corpus.

On July 10th, the Chief Justice of the Florida Supreme Court issued a writ of habeas corpus, releasing the men pending final disposition. Respondents moved to discharge the writ. The Supreme Court granted respondents' request for an emergency hearing en banc on their motion to discharge the writ. After oral argument in the Florida Supreme Court on July 14th, that Court ordered the pending interlocutory appeal transferred from the appellate court and consolidated with the habeas corpus proceeding.

Discharge of writ of habeas corpus.

On July 21st, in a 4-1 decision, the Florida Supreme Court rejected petitioners' due process and involuntary servitude arguments, discharged the writ of habeas corpus, and affirmed the trial court's orders. Petitioners' motion

for rehearing was "denied" but the Court apparently recanted much, if not all, its decision by saying that its July 21st opinion was "not res judicata" and preserving to petitioners the theoretical future right to litigate all issues, including even damages for wrongful issuance of injunction.

Despite the language of the order denying rehearing, the order compelling specific performance of personal services by petitioners stands. Petitioners are still under compulsion to perform and to pay fines as the second 55-day West Flagler racing meet (in November) nears. Their efforts to negotiate contractual terms sufficient to stay in business have been destroyed by naked judicial power, and they are not permitted to withdraw from servitude under their remaining contracts with West Flagler.

Ongoing involuntary servitude.

After the Florida Supreme Court ruling, petitioners submitted to the 28 remaining days of involuntary servitude of the first Flagler 55-day meet rather than return to indefinite incarceration without, in most instances, the ability to obtain release by payment of fines.

FEDERAL QUESTIONS TIMELY RAISED

Petitioners raised the issues of due process of law, involuntary servitude, lack of jurisdiction over the person, lack of subject matter jurisdiction, and lack of any jurisdiction after removal and prior to remand. They raised these issues in the court of first instance, in the appellate court and before the Florida Supreme Court.

In open court, counsel for petitioners argued from motions which had been filed:

> "We have moved to quash service with respect to those who . . . have not been served. . . . We had no authority to personally appear for [those] and do not desire to do so except specifically to contest jurisdiction. [T 2/4]
>
> * * *
>
> "Further there is a lack of jurisdiction over the subject matter . . . the gravamen of the complaint is that there is an interstate conspiracy and group boycotting presenting a federal question of violation of federal antitrust laws over which this court has no subject matter jurisdiction. The Sherman Act and the Clayton Act may not be enforced in this court. . . . This case should be dismissed and the entire matter should be disposed of in the federal court . . . [in] the suit . . . West Flagler Associates, Limited, vs. Richard F. Andrews, et al., Case Number 75-1213, Civil. [T 2/21]
>
> * * *
>
> "Your Honor, I . . . object to references to the ex parte hearing that took place in this court at 3 P.M. on . . . July 3rd. Counsel is improperly referring to that now. . . . To refer to it, to comment on it and rely on any actions or facts that took place when this court had no jurisdiction under federal law is highly improper.
>
> "THE COURT: Overruled. [T 2/25]
>
> * * *

"As grounds for the motion to dissolve, the defendants wish to offer testimony . . . demonstrating that the contract involved calls for personal services. . . . Secondly, the . . . purported contracts . . . are unconscionable . . . void . . . adhesion contracts which a court of equity would not enforce by . . . mandatory injunction. . . . The court will please take notice of the defendants' objection to the presentation . . . of testimony while the court, because of . . . [the] petition . . . [for] removal, lacked jurisdiction to hear the same. . . . We cannot, under any due process or equal protection concept be forced to that Hobson's choice and . . . a subsequent order . . . pursuant to a hearing that took place . . . without the presence of these defendants . . . taints the order of this court entered . . . after . . . remand. . . . [T 2/88-89]

* * *

". . . the issuance of the temporary mandatory injunction in this case is . . . [a ruling] on the final merits prior to discovery, prior to all of the procedures . . . for parties to properly prepare and present evidence. . . . [T 2/97]

* * *

"Your Honor, I want to demonstrate the personal services nature of these contracts.

"THE COURT: Not at this hearing. That is for the final hearing.

* * *

"Your Honor, a personal services contract according to the law I cited to the court—

"THE COURT: They are, in my opinion, personal services on the face of these contracts, and in the final hearing we will determine that, not now. [T 2/161-162]

* * *

"Your Honor, one of the tests of the propriety of mandatory injunctions is whether . . . [there is] a likelihood of the success of the plaintiff at the final hearing . . . unless I can demonstrate that to the court, I am foreclosed from offering evidence on that significant test. . . .

* * *

"THE COURT: I am not going into it. [T 2/198-199]

* * *

"I could state many other cases that have been cited to the Third District Court of Appeal . . . [on our emergency appeal]. I would like to adopt for purposes of this motion those citations . . . and I will file a copy of it with the court. [T 3/7]

* * *

"I respectfully submit in light of the extreme constitutional—the number of constitutional issues involved that have been raised in this matter involving the involuntary servitude, under the circumstances, the lack of due process afforded these defendants, that the court should stay its order and afford these defendants an opportunity to challenge those orders in the appellate court before it proceeds to enforce the contempt fines or jail sentences. . . . The fines themselves . . . are excessive on their face. They are not related to the means of the defendants. They are far in

excess of many's ability to pay . . . and they cannot pay the fines and remove themselves from jail at all." [T 3/11-12]

Despite the foregoing contentions and arguments by petitioners, the trial court entered the order appended at A-98.

On July 10, 1975, the trial court reduced to writing its orally announced rulings. That order is appended at A-103. Part of that order reads as follows:

> "On July 3, 1975, this Court sat for the purpose of hearing the application for mandatory injunction of the Plaintiffs. At the convening of the Court, the Defendants through their attorneys . . . announced to the Court that they had filed a petition to remove the suit to the United States District Court. The Court announced that it would proceed with the hearing and the Defendants asked leave to remove themselves from the courtroom and request for removal was granted. The Court then considered the pleadings and the testimony submitted by the State of Florida, County of Dade and the Plaintiff, West Flagler Associates, Limited.
>
> "At 6 o'clock P.M. on July 3, 1975, the Court was served with an order . . . remanding said cause . . . whereupon the Court then entered its order of July 3, 1975, at 6:10 P.M."

The Court thereupon denied the motions to dissolve, to dismiss, to quash and to dismiss for lack of jurisdiction.

The Court further ruled "That the Defendants' demand for jury trial be and the same is hereby denied" and

> "that the temporary mandatory injunction order of July 3, 1975, is hereby approved, ratified and confirmed and re-published as of this July 7, 1975, as an order of this Court. This Order is entered nunc pro tunc, as of July 7, 1975."

In their interlocutory appeal to the appellate court and in their briefs to the Florida Supreme Court, petitioners continued to present the due process, lack of jurisdiction and Thirteenth Amendment objections.

REASONS FOR GRANTING THE WRIT

The decision and opinion of the Florida Supreme Court affirming the proceedings below repudiates three critically important portions of the United States Constitution, as well as overruling a federal statute. The decision below flies directly in the face of many decisions by this Court. It posits an almost unbridled power in a state trial court. In the name of "the public interest" the Florida Supreme Court has approved a total denial of due process of law and has created a modern form of peonage more than 100 years after the adoption of the Thirteenth Amendment.

Totally apart from the fact that 43 persons or entities have been subjected to various kinds of summary judicial tyranny, to permit such a proceeding to stand would be to invite similar abuses in an era when the preliminary injunction is repeatedly being sought by public as well as private entities.

Judicial compulsion of personal services is involuntary servitude.

Once before in Florida history, the Florida Supreme Court countenanced a violation of the Thirteenth Amendment. The case came to this Court, which reiterated the perfectly obvious constitutional prohibition. *Pollock v. Williams*, 322 U.S. 4 (1944). There, Emanuel Pollock received payment in advance for a promise to perform services. He was convicted of a misdemeanor under a Florida statute concerning fraud. The Florida Supreme Court reversed a trial court grant of writ of habeas corpus. This Court reversed, enunciating the supremacy of the United States Constitution over the "public interest":

> "... in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. Resulting depression of working conditions and living standards affect not only the laborer under the system, but every other with whom his labor comes in competition. Whatever of social value there may be, and of course it is great in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service." [at 18]

The Thirteenth Amendment is "undoubtedly self-executing without any ancillary legislation, so far as its

terms are applicable to any existing state of circumstances. By its own unaided force and effect, it abolished slavery and established universal freedom." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). It is not a mere prohibition of state laws establishing or upholding slavery but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States. *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971). See also *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 438 (1968), and *District of Columbia v. Carter*, 409 U.S. 418, 422 (1973). Although none of those cases specifically dealt with the issuance of a preliminary mandatory injunction, the rationale is so plain and so all-encompassing that the compulsory performance of personal services simply cannot stand.

The preliminary mandatory injunction was clearly the fruit of the evidence and testimony taken ex parte while the federal district court had absolute and exclusive jurisdiction of the case.

The decision below attempted to justify the trial court's jurisdiction on the ground that the trial court waited until 15 minutes after remand to enter the order, but that order itself clearly states that it is based upon the hearing which was held ex parte during a time when the case reposed in the jurisdiction of the Federal District Court. The taint of that illegally obtained evidence cannot be washed by a 15-minute waiting period.

It was just to avoid such post-removal, pre-remand actions by state courts that Congress amended Title 28 United States Code, Section 1446(e). The pre-1948 version of that statute contained this language: "The State court

shall proceed no further therein unless the case is remanded." The 1948 amendment changed that language to read that after removal "the State court shall proceed no further unless and until the case is remanded." *Mitchum v. Foster*, 407 U.S. 225, 234, n.12 (1972); *Georgia v. Rachel*, 384 U.S. 780, 797, n.27 (1966).

For the trial court to ignore its lack of jurisdiction and proceed on the basis of hearings held in open, direct and complete contravention of federal law, and to be affirmed in this action by the Florida Supreme Court, is a direct repudiation of the federal supremacy clause, the Congressional statute and the decisions of this Court.

The trial court's incarceration for claimed contempt of an order rendered without subject matter or in personam jurisdiction violates due process.

As this Court has recently recognized in *Maness v. Meyers*, 419 U.S. 449 (1975), those orders which must be obeyed until reversed by orderly and proper proceedings are those issued by courts with jurisdiction over the subject matter and person. 42 L.Ed.2d at 583.

But a state court cannot punish with contempt the violation of an order beyond that court's jurisdiction. *Re Green*, 369 U.S. 689, 692 (1962):

> "A state court is without power to hold one in contempt for violating an injunction that the state court had no power to enter by reason of federal pre-emption."

See also *Utd. G. C. & Chem. Workers v. Wisc. Empl. Rel. Board*, 340 U.S. 383 (1950) (reversing a conviction for contempt for disobedience of a state court restraining order).

It has long been the law enunciated by this Court that a court has no power to punish for contempt violation of an injunction it had no jurisdiction to issue. *Worden v. Searls*, 121 U.S. 14 (1887). See *Ex Parte Rowland*, 104 U.S. 604 (1882):

> "But if the command was in whole or in part beyond the power of the court, the writ, or so much as was in excess of jurisdiction, was void and the court had no right to punish for any contempt of its authorized requirements." [27 L.Ed. at 864]

Refusal to hear petitioners' defenses until "later" rendered the hearing meaningless.

With petitioners' very liberty as well as their property at stake, the trial court procedure, affirmed by Florida's Supreme Court, was "we'll hear your defenses later." Ex parte hearings, short notice or none, refusal to hear defenses, setting a $25,000 bond for an injunction concerning $3,000,000 of property, refusal to stay contempt proceedings even for one day for appellate review — all these things, and more,[2] were affirmed by the Florida Supreme Court. This procedure plainly fails to be that "law which hears before it condemns; which proceeds upon inquiry; and renders judgment only after trial," long mandated by this Court. *Dartmouth College v. Woodward*, 4 Wheat 518

[2]See A-26 through 48, infra.

(1816). Refusal to hear defenses is what this Court defined as "judicial usurpation and oppression" in *Powell v. Alabama*, 287 U.S. 45, 68 (1932).

All defendants, old and young, are entitled to notice of a hearing "sufficiently in advance... to permit preparation." *Re Gault*, 387 U.S. 1, 33 (1967). See also *Boddie v. Connecticut*, 401 U.S. 371, 378-380 (1971), and *Goss v. Lopez*, 419 U.S. 565, 42 L.Ed.2d 725, 737 (1975). Nor can the imagined need for haste justify the proceedings below. See *Stanley v. Illinois*, 405 U.S. 645, 656 (1972):

> "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." [footnote omitted]

This Court has recently and forcefully ruled, in a suit against the very attorney general who appeared below, that "an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). There, through Mr. Justice Stewart, this Court said that:

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not embraced the general proposition that a wrong may be done if it can be undone.'"
>
> [407 U.S. at 82]

By contrast, with petitioners' freedom in issue, on rehearing the Florida Supreme Court below said:

> "Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein, including claims for damages for an improperly issued temporary injunction and the enforcement thereof."

Just what "main proceeding" the court thought remained is unknown. This case, filed on June 30, 1975, was over on July 29, 1975. The court's belated recognition of its error cannot be corrected by some theoretical future proceeding.

Summary

Under the Thirteenth Amendment, the state court had absolutely no authority to mandate servitude. Under Title 28, United States Code, Section 1446(e), the state

court had absolutely no authority to take the evidence and testimony upon which it based its mandatory injunction. Under the Fifth and Fourteenth Amendments to the United States Constitution, the state court had absolutely no authority summarily to issue any order not based upon notice and an opportunity to be heard and present evidence and testimony. For all or any of these reasons, the state court order of 6:10 P.M., July 3, 1975, was not merely incorrect but was void. Therefore, there was no valid decree to be violated and the trial court could not hold anyone in contempt.

CONCLUSION

For the reasons set forth herein, this petition for a writ of certiorari should be granted. Petitioners respectfully urge this Court to reverse the judgment of the Supreme Court of Florida concurrently with its issuing a writ of certiorari to that court.

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D., 1975

CASE NO. 47,674

JACK WILSON et al.,

Petitioners,

vs.

JACK SANDSTROM, Director
Department of Corrections and Rehabilitation,
Dade County, Florida, et al.,

Respondents.

And

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

Opinion filed July 21, 1975

Case of Original Jurisdiction—Habeas Corpus

An Appeal from the Circuit Court in and for Dade County,
Harvie S. DuVal, Judge

Richard A. Pettigrew and Guy B. Bailey, Jr. of Pettigrew and Bailey, for Petitioners-Appellants.

Robert L. Shevin, Attorney General; and James Dudley Whisenand, Assistant Attorney General; and Marion Sibley of Sibley, Giblin, Levenson and Ward; and Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, for Respondents-Appellees.

ADKINS, C.J.:

This is an original proceeding in habeas corpus wherein 18 owners of racing greyhounds seek relief from incarceration resulting from violation of an injunctive order of the circuit court entered July 8, 1975. A return to the petition has been filed.

We also have under consideration a review by interlocutory appeal of an order of the circuit judge entered July 3, 1975, granting a mandatory temporary injunction. Our jurisdiction was determined in *Wilson v. Sandstrom*, Case No. 47,674, opinion filed July 17, 1975.

For clarity, West Flagler Associates, Ltd., the owner and operator of the race track is hereinafter referred to as Flagler; the owners of the greyhounds used at the race track are referred to as the kennel owners.

Flagler instituted suit against the kennel owners and a kennel owners' association seeking a temporary and permanent mandatory injunction requiring the defendants to comply with contracts for furnishing greyhounds to the race track commencing July 3, 1975. The State of Florida and Metropolitan Dade County were allowed to intervene as parties-plaintiff.

Flagler alleged that under the contract it granted exclusive right to the named kennel owners to race their dogs and agreed to furnish purses, and that Flagler has complied with the contract. Flagler was licensed to operate from July 3, 1975, through September 4, 1975, from November 1, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. The contracts between Flagler and the kennel owners encompass these dates and were identical as to form.

Under the contracts the kennel owners agreed not to take any action which would be detrimental to the race track and greyhound racing. It was specifically provided that the kennel owners would not do any act which would bring about a temporary or permanent cessation or suspension of racing during the period of time covered by the contract.

It was alleged that under the rules of the Department of Business Regulation the kennel owners were required to present their dogs for schooling in June for the race meet commencing July 3, 1975. On June 10, 1975, the kennel owners threatened Flagler with indeterminate action. As a result, Flagler alleges it would be unable to conduct its race meet; that the kennel owners are required to supply "chattel of unusual and unique character; namely, racing greyhounds which are not readily obtainable in the ready market". Flagler alleges that it will not be able to get the owners to supply greyhounds and suffers irreparable damage for each day it is not open. It was also alleged that, if notice were given the dog owners, the dogs may be removed from the jurisdiction.

Pursuant to the sworn complaint, the court, on June 30, 1975, without notice, issued a temporary injunction restraining removal of the dogs from the jurisdiction and ordered a hearing to be held on July 3, 1975. On July 3, 1975, the kennel owners appeared and announced that a petition for removal to the Federal court had been filed. Therefore, they would not participate in the hearing. Their request for permission to withdraw from the hearing was granted.

At 5:55 p.m. on July 3, 1975, the Federal court of its own motion remanded the cause to the State court. The State court was still in session at the time of the entry of the order of remand and at 6:10 p.m. on July 3, 1975, an order was entered granting the temporary mandatory injunction. This order recited that the State of Florida was suffering a loss of tax revenue of $64,000 per day, and that Flagler was suffering irreparable damage because of the kennel owners' refusal to supply dogs. The court ordered immediate compliance with the contracts by the filing of entries not later than July 4, 1975, at 10:00 a.m.; that upon refusal of the kennel owners to file entries that Perrine Palmer take custody and control of the dogs for the purpose of running them.

The kennel owners refused to submit their entry and Palmer attempted to take control of the dogs. Because of the number of dogs and inability to get adequate help, a hearing was held at the request of the receiver on July 5, 1975. Custody of the dogs was thereupon returned to the kennel owners, who were informed that a contempt hearing would be held on Monday, July 7, 1975.

On the morning of July 7, 1975, prior to the contempt hearing, the kennel owners filed a notice of interlocutory appeal seeking review of the order of July 3, 1975. This appeal has been transferred to this Court.

At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975, the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding.

The kennel owners say that the order of July 3, 1975, imposing a mandatory injunction exceeded the jurisdiction of the circuit court. It is contended the mandatory injunction could not be granted until after final hearing, citing *F.E.C. Railway Co. v. Taylor*, 47 So. 345 (Fla.1908), and *Montgomery Pipe & Tube Company v. Mann*, 205 So.2d 660 (Fla.App.3d 1968). Flagler says that temporary mandatory injunction may be granted where it appears that plaintiff has a clear right to invoke the remedy free from reasonable doubt.

In *Kellerman v. Chase & Co.*, 135 So.127 (Fla.1931), Chase & Co. had purchased a crop of tomatoes by contract from Kellerman and others. Upon the failure to deliver, Chase & Co. applied to the circuit court and secured a temporary mandatory injunction requiring Kellerman to deliver the tomatoes. In upholding the validity of the temporary mandatory injunction, this Court said:

> "It is a general rule that a mandatory injunction can only be properly granted on a final hearing,

as its effect before that time is like awarding execution before trial and judgment. See Fla. East Coast Rwy. Co. v. Taylor, 56 Fla. 788, 47 So. 345 and cases there cited. However, in this case it not only appears that the plaintiff has a clear right free from reasonable doubt to invoke the remedy, but it also appears that to delay the remedy would necessarily involve a denial of the right because it is shown positively by both the allegation of the bill and the proof submitted that the tomato season covers a period of only some five or six weeks, and it is a matter of common knowledge that the tomato crop is of the most perishable character.

"In Zetrouer v. Zetrouer, 89 Fla. 253, 103 So. 625, 626, this court, speaking through Mr. Justice Terrell said:

> 'It is well settled that mandatory injunctions are rarely granted before final hearing, or before the parties have full opportunity to present all the facts in such manner as will enable the court to see and judge what the truth may be; however, instances are not wanting where relief by mandatory injunction was granted on the proper showing made. Taylor v. Florida East Coast R.R. Co., 54 Fla. 635, 45 So. 574, 16 L.R.A. (N.S.), 307, 127 Am. St. Rep. 155, 14 Ann.Cas. 472; Florida East Coast R. Co. v. Taylor, 56 Fla. 788, 47 So. 345; City of Ocala v. Anderson, 58 Fla. 415, 50 So. 572; 14 R.C.L. 317.'"

A mandatory temporary injunction may be issued requiring specific performance of a contract. *Bowling v. National Convoy and Trucking Co.*, 135 So. 541 (Fla.1931). See also, *Price v. Gordon*, 177 So.276 (Fla.1937). In *Daniel v. May*, 143 So.2d 536 (Fla.App.2d 1962) a mandatory temporary injunction was issued to require the defendants to remove a building encroaching on a setback line.

We conclude as a general rule, that a temporary mandatory injunction is proper where irreparable harm will otherwise result, the party has a clear legal right thereto, and such party has no adequate remedy at law. In the case *sub judice* we are confronted with a fourth consideration, i.e., the public interest.

Public consideration was specifically recognized by the Court in *F.E.C. Railway Co. v. Taylor*, *supra*, cited by the kennel owners, when the Court declined to issue a mandatory temporary injunction to force the railroad to build a spur track and depot. The rationale for not issuing the injunction was the detriment to the paramount public interest.

State Road Department v. Fugoli, 123 So.2d 473 (Fla.App.1st 1960) involved a situation where the State sought such an injunction for the removal of property encroaching on the public right of way. The appellate court in holding that mandatory injunctive relief was appropriate, said:

> "The relief contemplated should be readily available where the public right or injury to many is concerned, and is to be distinguished from those cases where injunctive relief may be deferred

> without undue hardship pending the result of an action at law. Such considerations drive to the very heart of the inherent power of courts of equity to provide the type of relief here sought. 123 So.2d at 475."

In *Zetrouer v. Zetrouer*, 103 So. 625 (Fla.1925), this Court affirmed the issuance of a mandatory temporary injunction to require defendants to open a road and remove a fence.

The record clearly shows that Flagler had a clear legal right to the issuance of an injunction and that irreparable harm would result if such injunction were not issued. Also, the State of Florida, through the loss of an estimated $64,000 a day in revenue, is irreparably harmed in that there is no other source to offset this loss of revenue. Furthermore, the State is losing the confidence of the public in its ability to properly regulate the gambling activities in pari-mutuel wagering. The State Deputy Economist testified to the tremendous impact that greyhound pari-mutuel revenue loss will have upon the budgets of the State and counties. The Finance Director of Dade County submitted an affidavit stating that the budget for the county fiscal year beginning October 1, 1975, had been established in reliance upon the continued receipt of funds derived in part from pari-mutuel dog racing activities in Dade County.

Furthermore, the State of Florida has granted to Flagler specific dates for racing — July 3rd to September 4th. Once these racing days are lost, they may be lost forever, as another track is scheduled to open on the day Flagler is scheduled to close. In addition, the damage to

Flagler in the minds of the public resulting from this boycott and refusal of the kennel owners to perform their contracts cannot possibly be measured in dollars and cents.

There is no adequate remedy at law. The trial court, sitting as a court of equity, certainly had the power and authority to protect the public interest or rights and also to avoid injury to many who are concerned with the continued operation of the track and the receipt of funds from the pari-mutuel revenues.

Regardless of the authority of the court to enter such an injunction, the kennel owners say that the contract is primarily one for a personal service and incarceration for failure to comply with the provisions of a contract requiring personal services amounts to involuntary servitude, thereby violating the provisions of the United States Constitution, Thirteenth Amendment, §1. We must first consider whether the contract does, in fact, relate to personal services.

In considering the contracts and the rules of the Board of Business Regulation relating to greyhound racing (Ch. 7E-2), it appears that the kennel owners had a contractual obligation to produce racing greyhounds at the track, while all things relating to the registration, training, etc., of the greyhounds prior to production of the greyhounds were prescribed and limited by the rules and regulations of the Board of Business Regulation.

The owners of greyhounds have no control over the greyhounds after they are brought to the track for a race. According to the rules, an owner must bring the greyhound to the track at least one hour before post time of the first

race of each program of each day. Rule 7E-2.14(3). The greyhound is then weighed in and placed "in lock out kennels under the supervision of the paddock judge and *no owner* or other person excepting the paddock judge, veterinarian, kennel master, scales clerk, lead out, judges or commission representatives shall be allowed in or near the lock out kennel". Rule 7E-2.14(12). This means that the representative of the kennel owner is required by rules of the Board of Business Regulation to present his greyhound to Flagler at least one hour before the first race. The greyhound is then placed in a lock out pen, and no person is permitted to approach that pen except officials designated by the rules.

Thereafter "under the supervision of the paddock judge, the kennel master shall unlock the lock out kennels immediately before weigh-in time to see that the kennels are in perfect repair and that nothing has been deposited in any of the kennels for the greyhounds' consumption . . ." Rule 7E-2.15(3). This means that just prior to the race the official of the Department of Business Regulation or those designated by the rules will unlock the lock out pen, inspect the greyhounds and thereafter they will be reweighed and the identification re-inspected. The greyhounds are led to the starting post by grooms provided by the track operation and licensed by the Department. Rule 7E-2.16.

It thus appears that under the rules regulating greyhound racing, the owner, trainer, or helper or agent of the owner has absolutely nothing to do with the greyhound except to present it to Flagler at least one hour before the first race. The owner's responsibility for the condition of the dog is established and regulated by the rules relating

to greyhound racing. The contracts make no changes in this responsibility. The duties and obligations of the owners and trainers relative to the training and schooling of the greyhounds are to the State, not to Flagler. The kennel owners supply a unique product, not readily obtainable on the market, and the contract merely provides that this unique product be produced by the kennel owner at a specified time.

A contract is properly considered a personal service contract when it involves one such as a football player or boxer signing to perform a game or a match. In the case *sub judice* the kennel owners simply contracted to furnish greyhounds properly schooled and trained under the regulations of the State of Florida for racing purposes at Flagler. A greyhound is not a "person" as provided in the United States Constitution, Amendment Thirteen, §1.

Even if we assume that some personal service is involved in the requirement that the kennel owners produce their unique product, temporary relief should nevertheless be granted. As stated in 17 *Fla. Jur., Injunctions*, §37, p. 397, 398:

> "Contracts of Service.
>
> Many of the cases in which equity has been asked to enjoin a breach of contract arise from disputes concerning contracts for personal services. Underlying the exercise of the injunctive power in such cases is the difficulty of replacing such service, and the inadequacy of damages as compensation for such loss. Injunctive relief, therefore, is often invoked to prevent violation of contracts calling

> for personal services or acts of a special character, or for such services by persons of eminence in their calling, possessing special qualifications. It follows clearly that reasons for equitable intervention are wholly lacking in cases of ordinary employment, where no personal contract or peculiar influence of the employee over the customers of his employer exists, and where the services are without special merit and are such as can be readily supplied or obtained from others without much difficulty or expense. In such cases injunctive relief will be denied."

Some of the contracts under consideration were executed more than a year prior to the beginning of the racing season, but all were executed at least five months prior to the beginning of the racing season. On June 10, 1975, the kennel owners advised Flagler by Notice of Intent dated June 10, 1975, as follows:

> "We the undersigned representatives of the attached list of kennel owners at West Flagler Associates Limited, have been authorized to serve you with this notice in accordance with Greyhound Racing Rules and Regulations # 7E 2.02(21)(b).
>
> "Please be advised that we wish to enter into immediate negotiations on all matters between the kennel owners and the track, relating to the meet which commences at your track on July 3, 1975. The purpose of this notice is to advise you and the State of Florida, that in the event you refuse to negotiate these matters in good faith,

> that the individual kennel owners may take such action which may affect the public welfare, and such action may be taken on or after June 25, 1975."

Obviously, the underlying reason for breach of the contract was hope for better provisions. There is no allegation or contention relating to fraud or duress in the execution of the contract. Flagler seeks the enforcement of the contract while the kennel owners demand that the terms be re-negotiated.

The case *sub judice* is not similar to *Pinellas County Classroom Teachers' Association, Inc. v. Board of Public Instruction*, 214 So.2d 34 (Fla.1968), where an order of the trial court enjoining public school teachers from striking and giving them alternatives of working and complying with their contracts, or terminating their contracts, was affirmed by this Court. A "strike" contemplates employment. The kennel owners are independent contractors, fitting the definition in 17 *Fla. Jur., Independent Contractors*, §2, p.174:

> "Another commonly accepted definition is that an independent contractor is one who, in the exercise of an independent employment, contracts to do certain work according to his own methods, and without being subject to the control of his employer except as to the product or result of his work.
>
> "The difference between an independent contractor and a servant is well recognized, the chief distinction being the right of control over the work."

The kennel owners contracted to provide greyhounds which were properly trained and schooled under State regulations. They were not subject to the control of Flagler except as to the product or result of their work. When the greyhounds were delivered to the track, the kennel owners exercised no further control over the greyhounds. This relationship contains all the elements of an independent contractor as opposed to an employee.

The kennel owners say that the contract does not contain sufficient mutuality of obligations so as to allow it to be enforced by mandatory injunction. The terms of any contract should be such that at least some of them might be enforced against the other party to the contract. As stated in 17 *Fla. Jur.*, *Injunctions*, §35, p. 396:

> "For the injunctive remedy to apply to restrain the breach of a contract, the contract must be certain and unambiguous in its terms. Further, the contract should be one in which there is mutuality of remedy as well as of obligation. That is, the terms must be such that equity might enforce at least some of them against the other party to the contract. This does not mean, however, that each party need have precisely the same remedy in form, effect, or extent. A mere difference in rights stipulated does not necessarily destroy mutuality of remedy. Thus the fact that a lease is terminable at the option of one party only does not preclude that party from enjoining a breach of its terms by the other."

The contracts in question give the kennel owners the right to withdraw dogs providing adequate notice of the

reasons for the withdrawal is given to the track. The track cannot arbitrarily refuse the owners' withdrawal or substitutions. It also provides that in the event of the withdrawal of dogs, either the track operator or the kennel owner may pursue any legal or equitable remedy, including a complaint to the State of Florida.

The contract is clear and unambiguous as to its terms. In consideration of the kennel owners' agreement to furnish the dogs, the track owner is required to accept the dogs tendered by the kennel owners and pay to the kennel owners a specified consideration for the furnishing of the dogs.

The contract does not give any party unbridled discretion to do or refuse to do any act. The kennel owners could enforce the contract just as Flagler. The contention that there is lack of mutuality is without merit.

The kennel owners contend that the notice of interlocutory appeal directed to the order granting the mandatory injunction automatically stayed the mandatory injunction and the subsequent hearing and order holding the kennel owners in contempt was erroneous or void.

Under general law, in other jurisdictions, a mandatory injunction is automatically stayed by an appeal from the order or decree granting it. 42 Am. Jur.2d, Injunctions, §348. An annotation entitled, "Stay of Injunction by Appeal", 93 ALR 723, recognized that Florida General Statutes of 1920, §2922 and §3170, departed from the general rule and provided that any injunction could be suspended if authorized by supersedeas order of the court. This statute was incorporated in *F.S.* §59.13, which, in turn, was incorporated as Rule 5.1, Florida Appellate Rules, which provides as follows:

> "When it shall be made to appear to the lower court that an appeal to review an interlocutory order or decree in equity has been or is about to be taken to the Court, the lower court may, in its discretion, grant a supersedeas or stay upon appellant's giving a good and sufficient bond conditional that such appeal shall be taken within 10 days, and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, together with such other and further conditions as may be fixed by the lower court in the event the order or judgment of which a review is sought is not quashed, modified or reversed."

Under this rule the interlocutory appeal would not operate as an automatic stay of the temporary mandatory injunction. An application for supersedeas must be made to the trial court or to the District Court of Appeal.

The kennel owners sought a stay from the trial court and in the District Court of Appeal, Third District, which were denied. Under our rules of procedure a mandatory injunction is not automatically stayed by an appeal, but only upon supersedeas.

City of Miami v. Cuban Vill-Age Co., 143 So.2d 69 (Fla.App.3d 1962), cited by the kennel owners, involved an appeal from orders prohibiting certain actions by the City and compelling other actions. The court held that the notice of appeal was effective to stay the operation of a mandatory injunction. The City was not required to furnish a supersedeas bond under a then existing statute, so the formal application for a supersedeas was unnecessary.

However, a litigant who may be required to post a bond must, of course, make formal application for a supersedeas in order to gain a stay.

In the case *sub judice* the interlocutory appeal did not operate as an automatic stay of the temporary mandatory injunction.

The kennel owners say the attempted Federal removal ousted the trial court of jurisdiction and the order granting the mandatory injunction on July 3rd was erroneous. When removal is shown to be improper the State court's actions are not void. *F & L Drug Co. v American Central Ins. Co.*, 200 F.Supp. 718 (Dist.Ct. Conn. 1961).

In *Metropolitan Casualty Ins. Co. v. Stevens*, 312 U.S. 563 (1941) the Supreme Court rejected a similar argument. Although that case proceeded under an earlier version of the removal law, the jurisdictional proscription was similar:

> "While the opinion does not expressly consider the effect of a petition for removal on subsequent proceedings in the state court, the clear import of the decision is that the proceedings are valid if the case was not in fact removable.
>
> • • •
>
> "The rule that proceedings in the state court subsequent to the petition for removal are valid if the suit was not in fact removable is the logical corollary of the proposition that such proceedings are void if the cause was removable. 312 U.S. at 566."

Furthermore, in 76 C.J.S., Removal of Causes, §239, it is stated:

> "Where the right to remove a cause from a state court to a federal court does not in fact exist, and after an attempted or colorable removal the cause is remanded by the federal court for want of jurisdiction, the jurisdiction of the state court is to be regarded as never having been lost, the federal court never having acquired jurisdiction; or at most the state court is said to have merely had its jurisdiction suspended during the period of the attempted or colorable removal of the cause. Proceedings had in the state court after the attempted removal and pending the remand are generally held to be valid and effectual, except, perhaps, where such proceedings were in violation of an injunction lawfully issued by the federal court; but there is authority to the contrary."

In the case *sub judice* the cause was remanded to the State court within hours after the petition for removal was filed. The cause was remanded at 5:55 p.m. on July 3rd and the injunction order was entered at 6:10 p.m. on July 3rd, after the cause had been remanded. The trial court had jurisdiction.

We conclude that the order of July 3, 1975, granting the mandatory injunction was within the jurisdiction of the court and error has not been shown. We also conclude that the trial court had jurisdiction to consider the contempt proceedings of July 8th.

The record clearly demonstrates that the kennel owners willfully and deliberately violated the injunctive order of the court. The courts and judges have inherent power by due course of law to punish by appropriate fine or imprisonment or otherwise any conduct that in law constitutes an offense against the authority and dignity of a court or a judicial officer in the performance of judicial functions. *State ex rel. Buckner v. Culbreath*, 3 So.2d 380 (Fla.1941). The sole reason for the incarcertaion of the kennel owners was their willful failure to comply with the temporary injunctive order of the court. Just as in any other contempt proceedings, the kennel owners carry the keys of their prison in their own pocket. *Demetree v. State*, 89 So.2d 498 (Fla.1956).

In an effort to renegotiate an existing contract by ignoring an injunctive order of the judiciary, the kennel owners have gravely affected the public interest, the revenue of the State of Florida and the revenue of individual counties. Misunderstandings among parties should be adjusted where possible without litigation, for a fair settlement is preferable to a good law suit. On the other hand, the judicial process is always available in the event the fair settlement is not reached. When the judicial process is involved, all parties are bound by the orders and judgments of the court having jurisdiction until such orders or judgments are reversed or modified by an appellate court. Although the kennel owners may feel justified in their complaints, their course of action in depriving the State and the counties of needed revenue certainly warrants the actions of the trial court. Their business is profitable only by virtue of a State statutory permission to operate dog

tracks guided by regulatory measures adopted by the State. It might be said they are "biting the hand that feeds them".

In summary, we hold that all of the orders entered by the trial court were proper under the circumstances and without error. The writ of habeas corpus is discharged and the petitioners therein are remanded to the custody of respondent, such incarceration to begin on Tuesday, July 22, 1975, at 5:00 p.m.

The orders of the trial court reviewed by interlocutory appeal are affirmed.

All litigation has been carefully considered, and, in view of the public interest involved, the time for filing a petition for rehearing is limited to Wednesday, July 23, 1975, at 5:00 p.m. However, this decision and order shall be effective forthwith and the granting of this privilege of rehearing shall not operate as a stay of any proceedings in this cause.

It is so ordered.

ROBERTS, OVERTON and ENGLAND, JJ., concur.

BOYD, J., concurs in part and dissents in part with opinion.

Boyd J., concurring in part and dissenting in part

I concur in that portion of the majority opinion holding that courts should not permit defiance of lawful orders and that the urgent public economic interests involved here

require speedy and conclusive action. It is obvious that the racing contract for the Flagler Track has been broken, and I agree that those responsible should be held liable. Determination of liability should be made at an early date, and in the meantime this Court should authorize the Flagler Track to operate with other dogs, if the parties should be unable to reach an agreement suggested by counsel for the owners during argument at this Court, whereby the dogs would run with sufficient proceeds being placed in the registry of the Court until final determination of the rights of the parties thereto shall be made.

I respectfully dissent to that portion of the majority opinion which authorizes specific performance of the racing contracts by the owners, as I feel this constitutes involuntary servitude in conflict with the Thirteenth Amendment to the Constitution of the United States. In expressing this view I recognize that in some instances courts may require specific performance, but the unique nature of the services involved by the owners, handlers and trainers in the instant case is such as to place them under the protection of the Thirteenth Amendment.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 47,674

JACK WILSON, et al.,
JACK SANDSTROM, Director, Department of Corrections and Rehabilitations, Dade County, et al.,

Respondents,

AND

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,

Appellee.

PETITION FOR REHEARING

Pursuant to the closing paragraph of this Court's Order of July 21, 1975, and to Rule 3.14 and other applicable Florida Appellate Rules, Petitioners, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall,

Stephan Merlock, Frances Fulginiti and Paul Discolo, and Appellants, Florida Greyhound Owners & Breeders Association, et al., respectfully move this Honorable Court to enter an Order rehearing, reconsidering and granting new oral argument concerning its Orders of July 17, 1975, and July 21, 1975, and as grounds therefor would show unto this Honorable Court as follows:

Unfortunately, because of the Court's felt need to render a prompt decision, it has accepted whole pieces of briefs filed by Flagler and the Attorney General and incorporated large portions of those briefs in its opinion. Indeed, one large portion of the opinion accepts almost verbatim the "Supplemental Brief on the Merits" filed, contrary to all appellate rules known to petitioners, after oral argument in this cause. As will be shown below, that brief has caused this Court to have a total misapprehension of the nature of the services required to be rendered by petitioners in this matter.

A cursory examination of the authorities cited shows that this Court's understandable reliance upon those legal representations is not only misplaced, but this Court's elevation of those briefs to the permanently recorded law of Florida has committed this Court's prestige and reputation to clearly erroneous statements of the law.

1. *Error Concerning Removal.*

One of these absolutely incorrect, unarguably erroneous statements involves the question of jurisdiction of state courts following removal and before remand. It is critical to this Court's decision. And it is wrong.

It was plainly necessary for respondents to have the Court accept this position, for as Mr. Sibley admitted to the Court on oral argument, *the July 3 order* (the necessary prerequisite for all subsequent orders *was based upon the testimony and evidence taken after removal and prior to remand.*

This Court's opinion, adopting Flagler's brief, cites *Metro. Cas. Ins. Co. v. Stevens*, 312 U.S. 563 (1941), for the proposition that post-removal state court proceedings "are valid if the case was not in fact removable." This Court's opinion acknowledges that *Stevens* was dealing with an earlier version but says "the jurisdictional proscription was similar." This statement is irrefutably incorrect. An amended "version" of the statute was passed expressly to *overrule* such statutes as that in *Stevens.* Title 28 United States Code §1446(e) *explicitly* provides that after removal "the state court shall proceed no further unless and until the case is remanded."

One of the two pre-eminent commentators on Federal jurisdiction discusses §1446(e) as follows:

> "The language of this section makes it clear, *contrary to the prior law*, that even though it ultimately be determined by the federal court that an action was not removable, *the state court may not act after the petition for removal has been filed*, prior to remand and its orders in that interim are void.
>
> "Any further proceedings in the state court are coram non judice and will be vacated."
>
> [1 *Barron & Holtzoff, Fed. Pract. & Proc.* 527 (Wright Ed. 1974), emphasis supplied]

To the same effect, see, *e.g.*, *State v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971); *Master Equip. Inc. v. Home Ins. Co.*, 342 F.Supp. 549 (E.D. Pa. 1972); *Fire Assn. v. Gen. Handerchief Corp.*, 107 N.E.2d 499 (N.Y. 1952); *Hopson v. No. Amer. Ins. Co.*, 233 P.2d 799 (Ida. 1951); *State v. Price*, 190 S.E.2d 403 (N.C. 1972); *Hornung v. Master Tank & Welding Co.*, 151 F.Supp. 169 (D.N.D. 1957).

The other and most-widely accepted authority in the field writes:

> "And the state court is deprived of jurisdiction to proceed with the . . . action unless and until the case is remanded, irrespective of whether the action is removable, which is a question for the federal court. * * * . . . §1446(e) operates as a statutory stay upon further state court proceedings in the removed action. Any further proceeding in the state court in the removed action, unless and until the case is remanded, would be a nullity, unless the defendant appeared in the state action and contested the right of the state court to proceed."
>
> [1A *Moore's Fed. Pract.* 511 (1974)]

Against these authorities and the vast authorities in accord, *e.g.*, *Mitchum v. Foster*, 407 U.S. 225, 234 n12 (1972); *Ga. v. Rachel*, 384 U.S. 780, 797 n27 (1966); *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), *cert. den.* 355 U.S. 842 (1957); *Allman v. Hanley*, 302 F.2d 559 (5th Cir. 1962); *Penna. v. Bradshaw*, 361 F.Supp. 405 (W.D.Pa. 1973); *De Moss v. Kelly Services, Inc.*, 355 F.Supp. 1111 (D.P.R. 1972); *Caldwell v. Montgomery Ward*

& Co., 207 F.Supp. 161 (S.D.Tex. 1962); *Saslow v. State Farm Mut.*, 224 F.Supp 965 (D.Alas. 1953), Respondents have succeeded in their effort to have this Court adopt dicta from one district court (concerning the *repealed* statute) and a *C.J.S. citation based upon the repealed statute.*

Although correct, this Court's conclusion that after remand "the trial court had jurisdiction" plainly misses the point. That point is that the trial court's 6:10 p.m. *order was based upon* "evidence" received at a "hearing" which the trial court had no power to hold. Any such evidence is analogous to the "poisoned tree" and the July 3 order is its "fruit." The July 3 order was and is therefore void. It was based upon void proceedings held *ex parte* and without notice to petitioners.

Thus, the July 3, July 4, July 5 orders and July 7 and 8 orders are *all* fruit of the poisoned tree. A court cannot hold anyone in contempt of a void order. See, *e.g.*, *State ex rel Everette v. Petteway*, 179 So. 666 (Fla. 1938).

2. *Error Concerning Overbroad Rulings Which May Be Res Judicata.*

In its decision rendered only three weeks after this suit was filed—based upon proceedings occurring prior to petitioners' even being able to file their answers, affirmative defenses and counterclaims, and based upon the trial court's determined (and apparently successful) *refusal to accept any evidence* proffered by petitioners—this Court's decision *decides the entire case.*

For unless this Court recants its expansive holdings, it has decided a case before defendants were permitted to plead and despite the fact defendants were allowed to adduce no proof. Despite the fact that not one of these orders has yet been appealed, briefed or argued, this Court has apparently stamped its approval upon: (a) denial of hearing on a bond (July 8 Tr. p. 37); (b) refusal to hear the individual's personal finances with reference to their "keys to the jail" (Tr. 38); (c) refusal to hear evidence concerning the enforceability of the contracts (Tr. 39); (d) denial of jury trial for criminal contempt (Tr. 37); (e) refusal to hear any evidence on the defenses (Tr. *passim*); (f) denial of the motion to dismiss the complaint; (g) denial of the motion to dissolve. Moreover, this Court has evidently ruled upon the issues of independent contractor vs. employee status [a jury question, *cf.*, *e.g.*, *Cantor v. Cochran*, 184 So.2d 173 (Fla. 1966) and *Magarian v. So. Fruit Dist.* 1 So.2d 858 (Fla. 1941) (both holding that the question of independent contractor v. employee status depends upon all the circumstances; clearly a question of fact); *Watkins v. Sims*, 88 So. 764, 765 (Fla. 1921) (holding such questions to be for the jury)], though petitions have never even briefed the matter.

This fear is not unfounded. This Court has held that habeas corpus proceedings resulting in final adjudications of issues may have *res judicata* effect. *See Crane v. Hayes*, 253 So.2d 435, 440 at ¶[5] (Fla. 1971).

Although these petitioners have never been accorded the right to adduce *any* evidence in support of their position, nor even to have the time mandated by Florida's Rules of Civil Procedure to answer, this Court has ruled

expressly or impliedly against petitioners on nearly every defense or position they could take.

Surely this Court did not intend that these defendants, because of the "public interest" or whatever rationale, are deprived of all rights to plead, take discovery, demand jury, adduce proof or, in general, present defenses. Yet the expansive nature of the rulings (also, *e.g.*, on all the contract issues raised in briefs which were researched and asembled within the space of three weeks) and the *res judicata* rationale of *Crane v. Hayes* appear to foreclose all defenses.

This Court has ignored, but perhaps foreclosed, the issue whether Flagler could split its cause of action and file, as it did, a Federal Court complaint for Federal anti-trust violations based on the same facts and arising out of the same occurrences and transactions as that sued upon in the case below. This Court has ignored but perhaps foreclosed the petitioners' own anti-trust defenses and counterclaims.

Contrary to Mr. Sibley's oral assertion to this Court that due process means only "the right to be present," due process means more than the opportunity to be "present." Since prior to Florida's becoming a state, the United States Constitution has mandated due process. The courts have repeatedly found it absent where a procedure has violated Daniel Webster's negative definition of it in *Dartmouth College v. Woodward*, 4 Wheat 518, 4 L.Ed. 629 (1816):

> "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."

See also *Powell v. Alabama*, 287 U.S. 45, 68 (1932), holding that due process means that:

> "... no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. 'Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.' "

And see this Court's decision in, *e.g.*, *State ex rel Paoli v. Baldwin*, 31 So.2d 627, 630 (Fla. 1947) (reversing the State Racing Commission's revocation of a trainer's license):

> "A hearing without the right to interpose reasonable and legitimate defenses cannot constitute due process of law."

3. *Error Concerning Appellate Rule 5.1.*

Flagler and the State led this Court into error in the assertion that 1920 Florida Statutes §§2293, 3170 are "incorporated into" F.A.R. 5.1 via §59.13. That early statute was mandatory: "*No appeal ... shall* operate as a supersedeas *unless* the judge order[s] a stay" is plainly not "incorporated" into F.A.R. 5.1. "... the lower court

may . . . grant a supersedeas. . . ." The old rule has been repealed. Florida therefore reverted to common law, and the appeal of the mandatory injunction automatically stayed the trial court's contempt power. *Powell v. Land & Impr. Co.*, 26 So. 700 (Fla. 1899).

4. *Error Concerning Compulsion of "Unique Services."*

Flagler urged and this Court has accepted as one of the bases of its opinion, an erroneous passage in 17 Fla. Jur. *Injunctions* §37 at 397-8. That section states as follows:

"Contracts of Service.

Many of the cases in which equity has been asked to enjoin a breach of contract arise from disputes concerning contracts for personal services. Underlying the exercise of the injunctive power in such cases is the difficulty of replacing such service, and the inadequacy of damages as compensation for such loss. Injunctive relief, therefore, is often invoked to prevent violation of contracts calling for personal services or acts of a special character, or for such services by persons of eminence in their calling, possessing special qualifications. It follows clearly that reasons for equitable intervention are wholly lacking in cases of ordinary employment, where no personal contract or peculiar influence of the employee over the customers of his employer exists, and where the services are without special merit and are such as can be readily supplied or obtained from others with-

> out much difficulty or expense. In such cases injunctive relief will be denied."

The anonymous writer of that section cited American Jurisprudence (1st) as his only authority. When, however, the compilers of Am.Jur. revised their encyclopedia in 1969 (42 Am.Jur.2d), they realized that there was *no authority* for that assertion and omitted it from Am.Jur. 2d. Florida Jurisprudence has merely failed, in its pocket part supplement, to note the error in citation. This Court, therefore, has lent its credibility to a scrivener's error! Contrast this with 5A Corbin *Contracts* §1204 (1964): "It is almost universally held that a contract for personal services will not be specifically enforced, either by an affirmative decree or by an injunction." And compare it even to the corrected version of the Am.Jur. citation:

> "Equity will not, by decreeing specific performance or by issuing a mandatory injunction, compel one person against his will to employ or serve another although he has contracted to do so. Speaking generally, it may be said that it is the right of an employer to discharge his employee and of the employee to quit his employer's service subject to no other penalty than a judgment for damages for breach of the contract. Neither will a court of equity, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. It has been said that this refusal is based in part upon the difficulty or impossibility of enforcement and of passing judgment upon the quality of perform-

> ance, and in part upon the undesirability of compelling the continuance of personal association after disputes have arisen and confidence and loyalty are gone. In some cases it has been observed that an award of that character against an employee would seem like the enforcement of involuntry servitude, and to award it against an employer would constitute an attempt by the courts to run the business of the country, which would be dangerous."

There is no authority for the Florida Jurisprudence section cited favorably by this Court. The overwhelming body of case law holds precisely to the contrary.

5. *Error Concerning Denial of Jury Trial.*

Since the contempt proceeding below did not involve a compensatory fine payable to plaintiffs, and since it imposed jail terms primarily to vindicate the court's dignity and authority rather than compensate plaintiffs, it was a criminal contempt proceeding. Petitioners could therefore be held in contempt only after jury trial. See *Demetree v. State ex rel Marsh*, 89 So.2d 498, 501 (Fla. 1956); *Schoenthal v. Schoenthal*, 138 So.2d 802, 803-4 (3d Fla. DCA 1962); *South Dade Farms v. Peters*, 88 So.2d 891, 897-903 (Fla. 1956); *Wallens v. Buchanan*, 168 So.2d 687 (3d Fla. DCA 1964); and *Dade CTA v. Rubin*, 217 So.2d 293, 296 (Fla. 1969).

6. *Error Concerning Nature of Contracts.*

By relying solely on Flagler's argument rather than any facts presented at an adversary hearing and by en-

grafting Flagler's supplemental brief as part of its opinion (virtually all of page 7 of the opinion), this Court has been deceived into believing that petitioners had no personal services to be rendered. Although it is true that kennel owners cannot go onto the track itself at race time, it is *absolutely untrue* that these are the only duties required. If the trial court—or this Court—were to accord petitioners their fundamental constitutional right to offer evidence and testimony on this issue, the veracity of Mr. Sibley's supplemental fact statement could be checked. But apart from that, it should suffice to recall that *the trial court was convinced the contracts called for personal services*, and said so:

> "The Court: They are, in my opinion, personal services on the face of these contracts. . . ."

Neither the trial court, nor this Court, has allowed the kennel owners to submit evidence to depict the full term of the contract. See the transcript as follows, at pages 180-190:

> "Q. [of Mr. Konnick] Tell us about what is involved in training dogs.
>
> "MR. WARD: Your Honor, I will object to the materiality of this. I do not see the relevancy to the proceeding we have before Your Honor today of what it takes to be a dog trainer.
>
> "THE COURT: I do not know what that has to do with today's hearing.

"MR. PETTIGREW: It has to do with the responsibility of the persons being sued in this case. I want to demonstrate the personal service nature of these contracts.

"THE COURT: That has nothing to do—

"MR. PETTIGREW: Therefore, the propriety of the remedy of specific performance and injunctive relief on a mandatory basis—

"THE COURT: Denied.

"MR. PETTIGREW: Your Honor, I would like to proffer in the record—

"THE COURT: It is proffered. You do not need to do it by testimony. You may proffer whatever you wish.

"MR. PETTIGREW: I would expect to elicit from Mr. Konick and other witnesses that the Flagler Kennel Club booking application and contract requires personal services by the kennel owner, or his appointed agent, requiring them to maintain and condition two greyhound dogs trained and available for hurdle racing, to condition all greyhounds for schooling, to present the greyhounds for racing and be present in person at the racing meet, to supervise and conduct all the obligations of the contract involving schooling, conditioning, and maintaining of dogs, that these personal services are unique, that a dog will only fully respond to the specific handling by its

trainer, handlers and others fully acquainted with its unique characteristics; that training and conditioning are continuing processes; and that a racing kennel, in fact, as is to be required by the contract, is really required to provide a group of personal services through the owners in the training, conditioning, and in the continuous maintenance of the dogs for racing; and that clearly, under Florida case law, under the facts, they would amount to personal services contracts.

"That ends the proffer.

"THE COURT: All right.

"MR. WARD: For the record, we object to the proffer, Your Honor.

"THE COURT: The proffer is already in. It is in the record. The proffer will be denied.

"MR. PETTIGREW: Your Honor, I would like to call Mr. Perrine Palmer.

(Witness excused.)

* * *

"Q. (By Mr. Pettigrew) Mr. Palmer, pursuant to this Court's order on July 3rd, did you have occasion to try to take over and maintain the dogs attached to the exhibit and others at the Florida Kennel compound?

"A. Yes. I have a report here that I am ready to submit whenever the Court wants to receive it.

"Q. Did you determine that the greyhounds placed under your legal charge were animals that could best be supervised and taken care of by their own owners and trainers?
"A. Yes.

"Q. Did you, in fact, determine that without the experienced handling by the owners or trainers or other teams providing maintenance services for them that harm could come to the dogs?
"A. Yes.

"Q. Did you not join with me in requesting the Court to return full responsibility for possession, care and conservation of the dogs to the trainers and owners?
"A. Yes.

"THE COURT: Mr. Pettigrew, I will advise you that they have had that responsibility prior to that order.

"MR. PETTIGREW: Your Honor, that is correct, prior to the July 3rd—you mean—

"THE COURT: On July 4th they had the order specifically stating that they were to maintain and take care of their dogs, which I understand was not completely complied with.

"MR. PETTIGREW: All right, sir. I am not familiar with the July 4th order. [Entered *ex parte.*] I want to determine from a factual stand-

point from Mr. Palmer whether the maintenance of these dogs, their care and their handling, requires familiarity with the dogs.

"Q. (By Mr. Pettigrew) Was that your conclusion from your experience recently with these dogs?
"A. Yes, and in the best interests of the dogs that is what it required.

"Q. Do you think from your experience that anyone else can suddenly come in without prior training and run the dogs?
"A. No.

"Q. Why not, Mr. Palmer?
"A. I think conditioning greyhounds and racing greyhounds is a special qualification.

This Court itself has defined "personal services" as something which not only includes actual acts but also *supervision over time.* See *Calumet Co. v. Oil City Corp.*, 154 So. 141, 142 (Fla. 1934), refusing specific performance of a personal service contract which was such a contract because:

"the nature and character of the . . . [work] is left almost entirely to the good faith, judgment, discretion and skill of the one undertaking to . . . [do it], so that the performance of the contract requires some personal supervision that will extend over a considerable period of time . . . ."

Contrary to Mr. Sibley's focusing upon the rules, see paragraph 7 of the contract, which requires the presence of the owner at the track. And note paragraph 11, which *ipso facto* terminates the contract if the kennel owner dies. Is that not "personal"?

Calumet holds that such contracts will not be mandated "because of the inability of the court to undertake supervision of performance of such a contract." [at 142] Yet this Court has affirmed a trial court assertion of such a right and has *forced unwilling parties to "compete"* at dog racing, where the State has held out to the public that fair and competitive racing will occur and about which the public can wager. In fact, this Court has compelled a *charade* of racing, for it has forced unwilling parties to give the appearance of competition despite their contention and conviction that they have *nothing to win.* (The repetition by Flagler of its litany: "the largest purse in the world," ignores the evidence—available if any court deigns to hear it—that Flagler racing is also the *most costly* in the world. Gross purses are *not* net purses.) Is this in the "public interest"?

The contract ¶5 compels each kennel owner's prior "express consent" to run "more than one of his greyhounds in any stake . . . races made up by the Racing Secretary." The Regulations prohibit racing more than two and require express permission each time from the kennel owner. Is not this contract, prepared by Flagler and in case of ambiguities construed most strongly against it, violative of the Regulations and creative of the same kind of charade as the compulsion of unwilling competition? (This contract has no severability clause; one illegal

provision vitiates the entire contract. Has the Court ruled upon this so as to have a *res judicata* effect?)

It is apparent that this Court based its findings that the contracts are not personal service contracts on the contention that the only requirements affecting the delivery of the dogs are those rules promulgated by the State and not the rules of Flagler. Such a finding, which was argued for the first time by Flagler in its supplemental brief filed after oral argument, is supported nowhere in the record. It is clearly refuted by the proffer set forth above, and by the plain language of the contract itself. The contract provides, among other things, that the kennel owner "shall fully comply" with "all the rules and regulations of the *Track Operator*." How is this "plain and unambiguous on its face"? Nowhere in the contract are those rules identified and attempts to offer evidence on this issue below were denied with the explanation that "we will get to that later."

There is no evidence to support the conclusion of this court that:

> ". . . under the rules regulating greyhound racing, the owner, trainer, or helper of the agent of the owner has absolutely nothing to do with the greyhound except to present it to Flagler at least one hour before the first race."

Such a conclusion is, on its face, absurd. If the owners were not required to perform personal services, why did Flagler need a mandatory injunction in the first instance? The lower court had given Flagler custody of the dogs. If all that were necessary is to produce the chattel, that had been accomplished.

This Court concluded that the order of the court below did not violate the 13th Amendment by finding that the injunction required no personal services. There was no hearing allowed below on the factual basis of such a finding. Petitioners attempted to offer evidence of the personal services nature of the contract; evidence which the trial court refused to accept. *At best*, a factual dispute exists as to the exact nature of the services. Can this Court sanction a proceeding *where no evidence is allowed which offends the pre-conceived impressions of the trier of fact?*

Can this Court avoid constitutional review of involuntary servitude by giving it a different label and, then denying those charged the opportunity to refute it before an impartial trier of fact?

Such a process is at best a fundamental violation of due process of law, guaranteed by the Constitutions of the United States and the State of Florida.

7. *Error Concerning Certain Evidentiary "Findings."*

This Court, by reciting them in its opinion, apparently found important and was motivated in its decision by certain factual findings. Most are absolutely speculative —no evidence was adduced below to support or refute them. For example, there is not a shred of evidence that "the State is losing the confidence of the public in its ability to properly regulate the gambling activities in pari-mutuel wagering." (p. 6) That statement is paraphrased from the State's brief. It is purely gratuitous.

Yet it may now be *res judicata*. Another: "the damage to Flagler in the minds of the public . . . cannot possibly be measured." Again accepted by the Court from a brief. Again absolutely without evidentiary support. Another: "The kennel owners supply a unique product, not readily obtainable on the market . . . . " Contrary to this assertion, the evidence is that there are 156 other kennels licensed in Florida and Flagler's chief executive admitted he had not even *tried* to obtain other greyhounds. Another: "There is no allegation of or contention relating to fraud or duress in the execution of the contract." This is totally untrue. The July 3 mandatory injunction was issued only four days after filing of the complaint. Few of the defendants had even been served. None, obviously, had answered. In fact, the answer for most of these defendants, a true copy of which is annexed hereto, was not filed until after all argument and briefs were submitted regarding the writ of habeas corpus. Therefore, the answer is not contained in the appellate record. That answer alleges fraud, duress, conspiracy and other defenses which go to the validity of the contract. Petitioners attempted to offer evidence of these defenses to the trial court but were repeatedly rebuffed. The trial court unequivocally stated that it was not going to entertain any attacks as to the validity of the contract as that was for a later time. Another: the State is suffering $64,000 a day loss. Yet there will be (or would have been if a hearing had been held anywhere) evidence adduced showing that two South Florida race tracks have in fact enjoyed enormous increases in wagering with resultant increase in State funds. And there would have been evidence showing that making up the loss is a matter totally within the discretion of the State.

8. *Error Concerning the "Public Interest" Factor; Mandatory Injunctions.*

This Court has accepted the hysterical claims by Flagler and the State that "the sky is falling" and has predicated its entire opinion upon it. Assuming without comment that the gravity and public importance of the State's allowing those members of the public who suffer from the compulsion to lose money by gambling is—really—on the same level of public interest as, *e.g.*, the operation of schools and transportation facilities, and ignoring the fact that the Secretary of Florida's Department of Administration has publicly called the Flagler closing of *de minimus* importance to Florida's budget, this Court has nevertheless been led to grievous error.

However important it may be to have trains (and dogs) run on time, in this nation the rule of law and the limitations of the Constitution nevertheless must prevail.

Yet this Court, in the press of time, has altered the law heretofore established in its more deliberate decisions.

There is no authority for the proposition that the public interest can vitiate constitutional rights. There was no "state of emergency." Nor can loss of race track revenue be equated to an emergency. The State can make as much money as it wishes from gambling. If the Legislature wished, it could have authorized such operations all over Florida. It, or the Department of Business Regulation, could allow those which exist to open longer, making up any alleged lost tax revenues or, for that matter, making millions more. It is perhaps an inconvenience, but an emergency it is not. Moreover, by specifically iden-

tifying the exact dollar figure of its alleged loss, the State has shown an adequate remedy at law and the impropriety of injunctive relief.

The "taxpayers" have no greater right than any litigant. No life or limb was in danger. To use the guise of public interest to sustain injustice is indeed a dangerous precedent.

It also should be pointed out here that the Court's reliance on Flagler's legal scholarship has again led it astray. Contrary to this Court's statement in its opinion, no county of this State will lose nor have they lost any race track funds as a result of the down time at West Flagler. Those funds were "capped" by the 1971 legislature and the addition of monies by West Flagler to the pool will have no impact whatsoever on any county in this State.

Yet now, because of gambling receipts, this Court has—for the first time in Florida history—eliminated the requirement that mandatory injunctions must be based upon plaintiff's demonstration of his rights beyond a reasonable doubt. It has further eliminated the procedural safeguard that a mandatory injunction can only be entered after final hearing.

A mandatory injunction is in the nature of a final judgment. *FEC Ry. Co. v. Taylor*, 47 So. 345 (Fla. 1908). It unalterably disturbs the status quo. That is why in no previous case have the courts of this State authorized such temporary relief without a full opportunity for hearing and without a showing that the plaintiff would prevail beyond a reasonable doubt. *FEC Ry. v. Taylor*,

supra. In each of the cases cited by West Flagler and by this Court, defendants were afforded a full opportunity to be heard and at that hearing it was shown beyond a reasonable doubt that the plaintiff was entitled to ultimate relief. In *Kellerman v. Chase*, 135 So. 127 (Fla. 1931), cited with approval by this Court, the trial court awarded a mandatory injunction only after a full and adequate hearing was held at which hearing it was shown that the plaintiff was entitled to recover beyond a reasonable doubt. At that hearing it was determined by the trial court that the defendant had no defenses and was insolvent. The defendant admitted the allegations in the bill and stated merely that he did not wish to perform.

There is no analogy of that case to these facts. There was no full and adequate hearing in this case. Flagler did not rebut petitioners' defenses beyond a reasonable doubt. Those defenses were not even allowed to be offered. Nor is delivering boxes of tomatoes analogous to the training, care and supervision of racing greyhounds.

None of the cases cited by Flagler or the State stand for the proposition that *mandatory* injunctions may be granted on sworn affidavits or in a preliminary hearing without notice. Even the cases cited by West Flagler and this Court state unequivocally that, unlike a prohibitory injunction or restraining order, which can be issued without notice, a mandatory injunction can only be issued after a full hearing when it is shown that the plaintiff will prevail beyond a reasonable doubt. *S.R.D. v. Fugoli*, 123 So. 473 (1st Fla. DCA 1960) [the court merely reversed an order of dismissal], *Zetrouer v. Zetrouer*, 103 So. 625 (Fla. 1925) [citing with approval FEC Ry. v. Taylor, supra]. See Dobbs, *Remedies* (1973) at 105-106.

Using the standard expressed by this Court for almost 100 years, the procedure by which the mandatory injunction was issued constitutes a fundamental violation of due process.

As to whether Flagler's right was "clear," every plaintiffs lawyer in Florida would like to present his complaint by affidavit and without the interference of opposing counsel's cross-examination and the nuisance of hearing a defense. By that standard—and that is what this Court has adopted—all plaintiffs cases are "clear."

9. *Error Concerning Involuntary Servitude.*

Perhaps most critical in the casualties caused by this Court's adherence to Flagler's and the State's arguments, is petitioners' right to have due process with reference to their rights to be free from servitude.

The trial court said—we'll get to that "later." This Court says since the rules do not permit the owners on the track at race time and since dogs are not persons, there is no personal service. And, then, this Court, citing the aforementioned Florida Jurisprudence Section, states that even if they were personal services, that is all right. Both courts have reached this result without hearing any evidence from the kennel owners themselves. Apparently, this Court and the trial court have some preconception that kennel owners—like some horse owners—are gentlemen, absentee owner types, who get reports and look for ways to reduce their tax liability. If someone, somewhere, were to take any evidence on what a typical, Flagler kennel owner is and does, that impression would be destroyed. Many of the kennel owners, with their wives and children, spend every day of the year caring for,

training, handling, feeding, and practically living with their greyhounds. Without doing so, they cannot supply dogs to a track. To say that they have *merely* to "present their dogs one hour before race-time" and absent themselves, is *less* than a one-eyed view of the duties and responsibilities. If evidence were adduced, there could be the establishment of a *reverse* "beyond a reasonable doubt" standard and petitioners could still prove that their services are "personal."

But even if it were otherwise and the *contracts* did not (as they most certainly do) call for personal services, petitioners' 13th Amendment rights are still violated. For the July 3 preliminary mandatory injunction does compel involuntary servitude. It says to each of petitioners—"*you* do these things or *you* go to jail."

Such a ruling directly collides with every man's right to decline to work for any other. The last time a Florida court attempted to impose such a requirement, the United State Supreme Court reversed. See *Pollack v. Williams*, 88 L.Ed. 1095 (1944). There, this Court upheld a conviction for "fraud" for failing to live up to a contract of service. Justice Jackson, speaking for the Court, enunciated the supremacy of the Constitution over "public interest":

> "Whatever of social value there may be, and of course it is great, in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service."
>
> [at 1104]

This Court has never since then (until now) departed from this standard. See, *e.g., Pinellas CTA v. BPI,* 214 So.2d 34 (Fla. 1968), where even the unquestionable public interest in operating schools was not permitted to deprive teachers from quitting. This Court's attempt to distinguish *Pinellas CTA* as not involving independent contractors misses the point. Even independent contractors are free from involuntary servitude. To state otherwise, and under these circumstances, is to create a new category of peonage in this State.

CONCLUSION

In its opinion, this Court has relied heavily on the citation of fact and authority offered by Flagler and the Attorney General. In instance after instance, citations of fact and authority are erroneous. In the short period of time allowed for filing this petition, some of those grievous errors have been noted.

Because of an alleged public need, never shown to exist, this Court has given its seal of approval to an egregious abuse of due process. Four days after a complaint is filed, at an *ex parte* hearing, an order is entered awarding in effect, final judgment to one of the litigants. Five days later, the parties suffering from that *ex parte* order are jailed for not complying with it. They are afforded no opportunity to offer testimony against it. Nine days later, this Court has entered what amounts to a final judgment resolving many issues which were not even raised. The case is over. And yet, the time has not expired for most of these defendants to answer the complaint.

Some may be satisfied that the order of this Court must be "good" because it accomplished the desired result. Given a choice between involuntary servitude and jail, the kennel owners this time chose involuntary servitude. But prompt "results"—at the cost of long-lasting damage to fundamental principles of due process—are never worth the price. And this supposedly laudatory result has been attained by resort to naked power rather than law. Justifying this result required ignoring the record, ignoring the law and reaching for authority to such poorly regarded treatises as Florida Jurisprudence (citing Am.Jur. 1st). To reach its result has required a step back to the days which many thought were long behind; rubber hose confessions were once justified on the basis that crime was a public problem.

There is no justification for what occurred in this case. It is a miscarriage of justice without recent precedent.

Recognizing this Court's policy respecting rehearing, and recognizing that this Court's opinion reflected the decision of a majority, petitioners nonetheless respectfully and earnestly pray that this Court will carefully reexamine the record, its decision, and the authorities upon which it is based and quash the opinion of this Court rendered July 21, 1975.

Finally, since this petition for rehearing is written before receipt of the full opinion of this Court (a telephoto without the dissent of Justice Boyd was received late Monday), and respectfully request leave to file supplemental briefs in support of this petition within seven

days. Petitioners also respectfully direct this Court's attention to their reply brief filed in the Court of Appeal.

Respectfully submitted,

PETTIGREW & BAILEY
Attorneys for Petitioners and Appellants
1820 One Biscayne Tower
Miami, Florida 33131

By Guy B. Bailey, Jr.
GUY B. BAILEY, JR.

And by Eugene E. Stearns
EUGENE E. STEARNS

WE HEREBY CERTIFY that a true copy of the foregoing was mailed to Patton, Kanner, Nadeau, et al., 150 S.E. Second Avenue, Miami, Florida; Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida; Honorable Robert Shevin, Attorney General, The Capitol, Tallahassee, Florida; and Honorable Stuart Simon, County Attorney, Dade County Courthouse, Miami, Florida, this 23rd day of July, 1975.

Guy B. Bailey, Jr.
GUY B. BAILEY, JR.
Of Counsel

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975
TUESDAY, JULY 29, 1975

CASE NO. 47,674

JACK WILSON, et al.,

Petitioners,

v.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,

Respondents,

and

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Appellants,

v.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,

Appellee.

ORDER

Petition for Rehearing is denied. Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein,

including claims for damages for an improperly issued temporary injuction and the enforcement thereof.

ADKINS, C. J., ROBERTS, BOYD,
OVERTON and ENGLAND, JJ., concur

A True Copy

ATTEST:

Sid J. White

SID J. WHITE
Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975
TUESDAY, JULY 29, 1975

CASE NO. 47,674

JACK WILSON, ET AL,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and Rehabilitation,
Dade County, Florida, et al,

Respondents.

And

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

The above-styled causes are hereby consolidated sua sponte.

A True Copy

TEST:

Sid J. White

SID J. WHITE
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975

CASE NO. 47,674

JACK WILSON, PAT DALTON, C. R. HOLZSCHUHER, LESTER COLE, CHARLES M. LEAVY, F. B. STUTZ, WAYNE STRONG, JAMES L. FREY, GEORGE ALDER, DICK JORDAN, RICHARD F. ANDREWS, J. E. O'DONNELL, B. W. BASHAWAY, PAUL HAENEL, EARL HALL, STEPHAN MERLOCK, FRANCES FULGINITI and PAUL DISCOLO,

Petitioners,

v.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,

Respondents.

Opinion filed July 17, 1975

Case of Original Jurisdiction—Habeas Corpus

Richard A. Pettigrew and Guy B. Bailey, Jr. of Pettigrew and Bailey, for Petitioners

Marion Sibley of Sibley, Levenson and Ward, for Respondents

PER CURIAM

Petitioners (hereinafter referred to as dog owners) seek relief by habeas corpus from their incarceration for violation of an injunction order of the circuit court. The petition alleges that the incarceration is a violation of their constitutional rights of due process of law and equal protection of the law. It is also alleged that the order of contempt and the mandatory injunction upon which the contempt is predicated violates the dog owners' rights to avoid involuntary servitude. The respondent has filed his response and return to the writ of habeas corpus.

This litigation arose when West Flagler Associates, Ltd. (hereinafter referred to as Flagler) sought to enforce contracts between Flagler and the dog owners, wherein the dog owners agreed to supply dogs for racing at Flagler's track. On July 3, 1975, the circuit court entered an order granting a temporary mandatory injunction requiring the dog owners to supply the dogs. On July 7, 1975, the dog owners entered an interlocutory appeal from this order to the District Court of Appeal, Third District.

On July 8, 1975, a contempt order was entered wherein the dog owners were confined to the county jail for violation of the mandatory injunction with the right to purge themselves by returning their dogs for racing at the Flagler track. The habeas corpus proceedings now under consideration seek relief from the order of July 8, 1975, adjudging the dog owners in contempt and jailing them. We have jurisdiction in the habeas corpus proceeding. FLA. CONST., art. V, § 3 F.S.A.; F.A.R. 4.5, F.S.A.; FLA. STAT. Ch. 79, F.S.A.

The litigation has now become fragmented. The interlocutory appeal pending in the Third District Court of

Appeal (*Florida Greyhound Owners & Breeders Association, Inc., etc., et al. v. West Flagler Associates, Ltd., etc.*, Case No. 75-1068) seeks review of the order of July 3, 1975 granting the temporary injunction and the amendment to this order dated on July 4, 1975. The habeas corpus proceedings *sub judice* arose from the contempt for failure to provide by the terms of the injunction issued by the order of July 3, 1975.

In *Mize v. County of Seminole*, 229 So.2d 841 (Fla. 1969), we had for consideration the review of a bond validation proceedings for construction of a court house in Seminole County. In other proceedings the District Court of Appeal had rendered a decision requiring the circuit court to enjoin the issuance of the bonds because the City of Sanford was not the county seat. There was no question concerning our jurisdiction in the bond validation proceeding. In taking jurisdiction of the District Court's injunction proceeding, we said:

> "This Court, being vested with exclusive jurisdiction in all proceedings for the validation of bonds and certificates of indebtedness, would be completely frustrated in the necessary and proper exercise of that jurisdiction in the validation proceedings unless it could bring before it for review the decision of the District Court which enjoined the issuance of said bonds. Ultimate disposition of this case, therefore, is not only necessary and proper but essential to the complete exercise of our jurisdiction. We therefore accept jurisdiction . . . ." (p. 843)

Where we have jurisdiction of only a portion of fragmented litigation and the public interest requires an expeditious determination of the issues involved in all of the litigation, this Court should exercise its prerogative under FLA. CONST., art. V, § 3(b)(4), F.S.A., and issue "all writs necessary to the complete exercise of its jurisdiction."

It appears from the record that approximately $64,000 a day is being lost by the State of Florida by virtue of the closing of the track. This sum represents an estimate of the State's receipts from pari-mutuel betting. Because of the interest of the State of Florida and the public in the operation of the track, *we feel it incumbent upon us to expedite the final disposition of all proceedings in the State courts relating to this contractual controversy.*

There is no question concerning the jurisdiction of this Court in the habeas corpus proceeding. *That proceeding also involves constitutional questions which are identical to the constitutional issues pending before the District Court of Appeal.* It is therefore necessary and proper to the exercise of our jurisdiction that we issue a writ to consolidate proceedings in the same forum. Ultimate disposition of the validity of the order of July 3, 1975 is not only necessary and proper but essential to the complete exercise of our jurisdiction.

By virtue of the provision of the Constitution (FLA. CONST., art. V, § 3(b)(4), F.S.A.) authorizing this Court to issue *"all writs necessary to the complete exercise of its jurisdiction," on the basis of Mize,* and *on our own motion, we hereby direct the District Court of Appeal to transfer the case* of *Florida Greyhound Owners & Breeders Association, Inc., etc., et al. v. West Flagler Associates, Ltd., etc.,* Case No. 75-1068, *to this Court.*

Nothing in this decision should be construed to suggest that future litigants can *bifurcate* their appeal in order to accelerate appellate review or bypass the district courts. This case is unique in that petitioners invoked our original jurisdiction *from jail on substantial constitutional issues which were also pending in the District Court*, and *that there is a significant public interest in the prompt disposition of the entire controversy*. Due regard for the orderly processes of judicial administration would suggest that litigants in this procedural situation would normally seek habeas corpus in the same court which had jurisdiction over the interlocutory appeal.

We dispense with any further oral arguments and will consider these cases on the records and the briefs.

It is so ordered.

ADKINS, C.J., ROBERTS, BOYD, OVERTON and ENGLAND, JJ., Concur

IN THE SUPREME COURT OF FLORIDA
JULY TERM, AD. 1975
THURSDAY, JULY 10, 1975

JACK WILSON, ET AL.,

Petitioners,

vs.

JACK SANDSTROM, Director,
Department of Corrections and Rehabilitation,
Dade County, Florida,

Respondent.

WRIT OF HABEAS CORPUS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO: HONORABLE JACK SANDSTROM, DIRECTOR, DEPARTMENT OF CORRECTIONS AND REHABILITATION, GREETINGS:

Petitioners have filed in this Court Petition for Writ of Habeas Corpus charging that they are illegally detained and imprisoned by you. You are hereby commanded to make return to this writ on or before July 16, 1975 showing the lawful cause and authority for the detention and imprisonment of the petitioners, and thereafter comply with the order of this Court in the matter; petitioners' reply brief due July 21, 1975, and it is further ordered that this case is set down for hearing on Monday, July 21, 1975 at 9:30 o'clock a.m.

WITNESS the Honorable James C. Adkins, Chief Justice of the Supreme Court of Florida, and the Seal of said Court at Tallahassee, the Capital, on this the 10th day of July, 1975.

Sid J. White

Clerk of the
Supreme Court of Florida.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975
THURSDAY, JULY 10, 1975

JACK WILSON, ET AL.,

Petitioners,

vs.

JACK SANDSTROM, Director,
Department of Corrections and Rehabilitation,
Dade County, Florida,

Respondent.

Upon consideration of Petitioners' Motion to Release Petitioners on Recognizance or Alternatively Motion for Bond, said motion is granted and it is ordered that petitioners be released upon their own recognizance pending disposition of the cause in this Court.

A True Copy

ATTEST:

Sid J. White
Clerk Supreme Court.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
TUESDAY, JULY 8, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

Counsel for appellants having filed in this cause emergency motion to quash and/or stay preliminary mandatory injunctions requiring, *ex parte* and without evidentiary or legal support specific performance of personal service contracts, the emergency being grounded upon the orally announced jailing of defendants for non-adherence to involuntary servitude, and the court having considered same, it is ordered that said motion is denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of Appeal,
Third District

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
WEDNESDAY, JULY 9, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Limited Partnership organized and existing under the laws of the State of Florida,

Appellee.

WEDNESDAY, JULY 9, 1975

This matter having come on for hearing before the court after notice, on appellants' emergency motion to stay proceedings pending appeal, and the court having considered same, after hearing oral argument of counsel thereon, it is ordered that said motion is hereby denied.

It is further ordered that this appeal shall be advanced in accordance with the agreement of counsel for early disposition and their agreement to submit the appeal upon briefs already filed. The State of Florida is allowed to

file a brief on or before July 14, 1975 and appellants are granted to July 16, 1975 to respond to the state's brief. No further oral argument will be allowed.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of Appeal,
Third District

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20932

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
etc., et al.,

Defendants.

TEMPORARY INJUNCTION WITHOUT NOTICE

This cause came on to be heard upon the sworn complaint of the plaintiff which seeks in part a temporary injunction, without notice, enjoining and restraining, until further order of this Court, the defendant greyhound owners and kennel operators from removing from the jurisdiction of this Court any racing greyhounds owned, leased or controlled by the defendant kennel owners and operators, shown on a list thereof in Exhibit F to the complaint, and third parties having custody thereof from delivering or surrendering to the owners or lessees or any agents or representatives of the owners or lessees of any of the dogs in their possession listed in Exhibit F to the complaint, and the Court from the sworn complaint and evidence presented finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the injury and damage apprehended as hereinafter set forth and as alleged in the complaint will occur unless an injunction be granted without notice.

2. The contracts required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattel and product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law.

3. The plaintiff's application for temporary injunction and apprehension that the defendant kennel owners will remove the racing greyhounds from the jurisdiction of this Court if they were to be given notice of any application for such an injunction or other relief is well founded and irreparable damage and harm would result if the racing greyhounds were to be removed from the jurisdiction and such injunctive relief is necessary and essential to insure complete relief to the plaintiff.

Accordingly, the defendant greyhound owners and kennel operators enumerated in the complaint are hereby enjoined until further order of the Court from removing from the jurisdiction of this Court any of the dogs owned, leased or controlled by them and enumerated and listed in Exhibit F to the complaint. If any of the dogs listed are not within the custody and control of the defendant greyhound owners, their kennels or officers and agents of said defendants but rather in the possession and custody of third parties, then such third parties having custody and control of such greyhounds and actual notice of this order

are enjoined until further order of this Court from delivering and surrendering possession of any of the named dogs to any of the defendants or to any officers, agents or representatives of the defendants or any of them. Likewise the said defendants are enjoined from receiving delivery thereof.

4. This injunctive order shall become effective immediately, provided, however, that the plaintiff is ordered and directed to file with the Clerk of this Court, on or before July 1, 1975, a bond to be approved by the Clerk of this Court with the plaintiff as principal and a surety company qualified to do business in the State of Florida, as surety, payable to the defendants in the penal sum of $5,000 and conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain or may have been put to by reason of the issuance of this temporary mandatory injunction if this temporary injunction is dissolved or the cause dismissed.

5. That service upon Sylvan Holtzman, Attorney at Law, of a copy of this injunctive order and a copy of the complaint shall constitute good and sufficient service of this injunctive order upon all of the defendant dog owners and shall constitute notice to them of the issuance of this injunctive order. Service upon any persons not named as parties defendant herein and who have care, custody or control of any of the dogs enumerated in Exhibit F shall be effected by delivery to them of a copy of this injunctive order.

DONE AND ORDERED at Miami, Dade County, Florida, this 30th day of June, 1975.

s/ Harvie S. Duval

Circuit Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.:

WEST FLAGLER ASSOCIATES, LTD.
a Limited Partnership, organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer, and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LaCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

NOTICE OF FILING PETITION FOR REMOVAL

NOTICE is hereby given that on the 3rd day of July, 1975, the above-named Defendants who have been served, filed a Petition for Removal and Bond for Removal in the above-entitled action originally filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, to which Petition was attached a copy of all process, pleadings and orders which had been served and filed in this cause. A copy of this Petition for Removal, Memorandum in Support of Petition for Removal, and Bond for Removal are attached hereto.

NOTICE is also given that a copy of the Petition for Removal was filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, this 3rd day of July, 1975, for filing in the action removed.

DATE: July 3, 1975.

Respectfully submitted,

PETTIGREW AND BAILEY
Attorneys for Defendants

By: Bruce W. Greer

BRUCE W. GREER

I HEREBY CERTIFY that a true copy of the foregoing was hand delivered to Mr. Marion Sibley, and to Mr. Herbert Nadeau, at their respective addresses, this 3rd day of July, 1975, together with the Petition for Removal, Memorandum in Support of Petition for Removal, and Bond of Removal.

Bruce W. Greer

Of Counsel

UNITED STATES DISTRICT COURT
MIAMI DIVISION
SOUTHERN DISTRICT OF FLORIDA
CASE NO.:

WEST FLAGLER ASSOCATES, LTD.,
a Limited Partnership organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, ARTHUR M. BOBRICK, BILL FOREST, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LeCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MERLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

PETITION FOR REMOVAL

All Defendants who have been served in this action file this Petition for Removal from the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Florida, to the United States District Court for the Southern District of Florida, and respectfully represent to this Court:

1. Petitioners are Defendants who have been served in the above-captioned cause. Upon information and belief, Defendant, National Greyhound Association has not been served with process and, therefore, is not included in this Petition.

2. This civil action was brought, and is now pending as Case No. 75-20902, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. A factually indistinguishable, independent civil action was brought, and is now pending as Case No. 75-1213, in United States District Court, Southern District of Florida. That case is before the Honorable Peter T. Fay.

3. If the civil action brought in State Court were well pleaded, the United States District Court would have original jurisdiction pursuant to Title 28, U.S.C. § 1337, Title 15, U.S.C. §§1, et.seq., and other United States statutes. The Plaintiffs have inadvertently, mistakenly, or fraudulently concealed that the nature of the action filed in State Court is identical to that filed in Federal Court under the above Antitrust statutes, in that each raises a basic federal question regarding the alleged conspiracy and concerted action of the Defendants to impair interstate commerce by the restraint of trade against the Plain-

tiff dog track. These facts more fully appear in the deposition of David I. Hecht, which is filed with this Petition.

4. Removal of this action is predicated upon Title 28, U.S.C. § 1441, in that this action involves a federal question, and the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

5. Pursuant to Title 28, U.S.C. § 1446(d), this Petition is accompanied by a joint and several bond in the sum of $500.00.

6. Written notice of the filing of this Petition for Removal and Removal Bond has been given to all parties herein, and a copy of this Petition has been filed today with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.

7. Petitioners also file the following documents which constitute all of the process, pleadings, orders, and other documents filed and served in this action:

(a) Complaint

(b) Temporary Injunction Without Notice

(c) Order Re Hearing

(d) Civil Action Summons

(e) Order Requiring Plaintiff to Produce David I. Hecht

(f) Deposition of David I. Hecht

(g) Motion to Intervene

(h) Affidavit

(i) Notice of Hearing

WHEREFORE, Petitioners pray that this Court take jurisdiction of this action.

Respectfully submitted,

PETTIGREW AND BAILEY
Attorneys for Defendants

By: Bruce W. Greer
BRUCE W. GREER

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Before me, the undersigned authority, this 3rd day of July, 1975, personally appeared BRUCE W. GREER, Attorney for Petitioners, who upon being duly cautioned and sworn, deposes and states that he has personal knowledge of the facts set forth in the attached Petition for Removal and that they are true.

SWORN TO AND SUBSCRIBED before me, this 3rd day of July, 1975.

Geraldine Curtis

Notary Public, State of Florida
At Large
My commission expires Feb. 20, 1976. Bonded thru Maynard Bonding Agency.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Removal was hand-delivered to Mr. Marion E. Sibley, SIBLEY, GIBLIN, LEVENSON & WARD, 1301 Dadeland Boulevard, Miami Beach, Florida, and to Mr. Herbert L. Nadeau, PATTON, KANNER, NADEAU, SEGAL, ZELLER & LaPORTE, 150 S.E. 2nd Avenue, Miami, Florida, Attorneys for Plaintiff, this 3rd day of July, 1975.

Bruce W. Greer

Of Counsel

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902 — DuVal

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

v.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al.,
Defendants.

Miami, Florida
Thursday, July 3, 1975

The above-entitled matter came on for trial before the Hon. Harvie S. DuVal, Judge of the above-styled court, at the Dade County Courthouse, Miami, Florida, on Thursday, July 3, 1975, at 3 p.m., pursuant to notice.

* * *

APPEARANCES

JAMES D. WHISENAND, ESQ.,
Assistant Attorney General,
On behalf of the State of Florida.

WILLIAM D. MOORE, ESQ.,
On behalf of the Division of
Pari-Mutuel Wagering,
Florida Department of Business Regulation.

ROBERT CUEVAS, ESQ.,
Assistant Dade County Attorney,
On behalf of the Intervenors.

STUART W. PATTON, ESQ., and
HERBERT L. NADEAU, ESQ., of
the firm of Patton, Kanner, Nadeau,
Segal, Zeller and LaPorte,
Co-counsel on behalf of
West Flagler Associates, Ltd.

MARION E. SIBLEY, ESQ., of the
firm of Sibley, Giblin, Levenson & Ward,
on behalf of the Appellee.

RICHARD A. PETTIGREW, ESQ., and
GUY B. BAILEY, ESQ.,
BRUCE GREER, ESQ., and
SYLVAN HOLTZMAN, ESQ., of the
firm of Pettigrew & Bailey,
on behalf of the Appellants.

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* * *

MR. PETTIGREW: Your Honor—

THE COURT: Yes, sir.

MR. PETTIGREW: On behalf of the defendants in this matter, we would like to respectfully announce that the defendants have exercised their privilege of removing this case to the Federal Court, Southern District of Florida, and we respectfully regret we cannot participate further in this matter or any hearing, under the law of the United States Code.

MR. SIBLEY: I understand he is announcing his appearance for the defendants in this case, your Honor, for the record, and we would like to proceed, if your Honor will hear us.

We don't think this case can honestly be removed, so we would like to put on our case.

THE COURT: You may proceed.

MR. PETTIGREW: Your Honor, we respectfully request the opportunity to leave at this time.

THE COURT: Good-by.

MR. PETTIGREW: Thank you, sir.

MR. SIBLEY: Has your Honor read the complaint in this cause?

THE COURT: Yes, I have.

* * *

THE COURT: All right. The Court will enter a temporary mandatory injunction ordering the kennel owners that have been served to commence operation within 24 hours or a receiver will be appointed over the 18 kennels that are in the compound to operate with those dogs until further order of the Court.

The other kennel owners, if they do not choose to operate, rule to show cause may be brought no later than Monday to determine whether they are in contempt of this Court or not.

MR. WHISENAND: Your Honor, the State of Florida does have an order here prepared for granting its motion to intervene.

Do I submit this to the Court for the Court's signature?

THE COURT: Bring it here and I will sign it (indicating).

MR. CUEVAS: I have one, also, on behalf of the County.

THE COURT: Bring it here.

Can you prepare those orders, Mr. Sibley?

MR. SIBLEY: I have prepared an order, Your Honor, but I don't know whether it fits the ruling of the Court exactly or not.

I would like the privilege of having what the Court has ordered typed up and presented to the Court within a short period of time.

THE COURT: All right.

MR. PATTON: May I add to that these comments, Your Honor?

THE COURT: Go right ahead.

MR. PATTON: Your 24-hour matter does call for certain preparatory matters. For example, in order to run 24 hours from now, it is necessary that the kennel owners file by 10 o'clock tomorrow morning their entries.

If you would consider that as being part of your order, then they would commence their operations within the 24 hours, or Saturday.

In other words, there are two things that have to be done: First, they must enter the dogs by 10 o'clock tomorrow morning, and then in order to run Saturday, which would be the 24-hour period — if you would consider that in the order, we will submit it to you as being part of it.

In addition, we, in our prayer, have asked for a short day to be fixed, and it might be well for Your Honor to fix a short day for them to answer and then to fix a return date for our final hearing.

THE COURT: We'll include the 10 o'clock provision that you have in the injunction, but they have to have schooling, don't they?

MR. SIBLEY: They have had sufficient schooling.

You see, a majority of the dogs are coming right from Biscayne. They are running currently. It is only those series of dogs who have not been schooled, but who are required to be schooled, who they elicited for us.

They can proceed without any problem next Saturday, which is the day after tomorrow, provided they file their entries tomorrow at 10 o'clock.

We'll prepare an order along that line to fit the situation.

THE COURT: By appointment of a receiver, if they do not comply, do you want a hearing on appointing a receiver?

MR. SIBLEY: No. I would rather have Your Honor make it automatic in the event they fail to comply, that the Court will appoint a receiver.

THE COURT: Well, if they fail to comply by failing to enter their list of dogs by 10 o'clock in the morning, then the receivers will be appointed forthwith for the continued operation.

MR. SIBLEY: Yes, sir.

THE COURT: Do you have anyone to suggest?

MR. SIBLEY: Well, I put a witness on the stand, Mr. Palmer. He probably — he is the president of that compound out there. He is probably as good as any man in organizing that I know of —

THE COURT: Are there any objections or any suggestions by the State or the County?

MR. WHISENAND: We concur in that recommendation, Your Honor.

THE COURT: By the failure of the dog owners to comply with the order by 10 o'clock in the morning, Mr. Palmer will be appointed by the Court as the receiver of the dogs in the compound to operate as the receiver should be operated.

MR. PATTON: I thought there ought to be one other item that you perhaps want us — want to require us to furnish a bond of some kind, which is usual and normal.

May I suggest $25,000?

THE COURT: I think $25,000 would be sufficient.

We might also enjoin them from removing the dogs prior to —

MR. PATTON: Yes, Your Honor.

MR. SIBLEY: Enjoin them from moving them out of the compound?

THE COURT: That is correct.

(Thereupon the hearing was concluded.)

* * *

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

STATE OF FLORIDA :
: SS.
COUNTY OF DADE :

I, STANLEY SEPLIN, do hereby certify that the case of West Flagler Associates, Ltd., etc., plaintiff, versus Florida Greyhound Owners & Breeders Association, Inc., etc., pending in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, No. 75-20902, was heard before the Hon. Harvie S. DuVal, as Judge, on July 3, 1975; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, . . . constitute a true and correct transcription of my shorthand report of an excerpt of the proceedings of said case.

IN WITNESS WHEREOF I have hereunto affixed my hand this 3rd day of July, 1975.

S. Seplin

Certified Shorthand Reporter
Notary Public State of Florida At Large. My commission expires Dec. 25, 1977. Bonded thru General Insurance Underwriters.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: 75-1286 CIV-PF
(Filed July 3, 1975)

WEST FLAGLER ASSOCIATES, LTD.,
a Limited Partnership, organized and existing
under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LeCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

ORDER OF REMAND

THIS CAUSE is before the Court upon the Court's own motion.

The Court having considered the record, it is

ORDERED AND ADJUDGED that the above styled case is hereby remanded to State Court, it appearing from the face of the petition that there is no jurisdiction under Title 28, U.S.C., Section 1441.

DONE AND ORDERED at Miami, Florida this 3rd July, 1975 at 5:55 P.M.

C. Clyde Atkins

UNITED STATES
DISTRICT JUDGE
[For Judge Peter T. Fay]

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC., etc., et al.,
Defendants.

ORDER GRANTING TEMPORARY MANDATORY INJUNCTION

This cause came on to be heard upon the sworn complaint of the plaintiff for a temporary mandatory injunction after notice to the defendants, and upon consideration of the sworn complaint and the evidence presented to the Court, the Court finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the equities are with the plaintiff and against the defendants.

2. That the individual dog owners named in the sworn complaint have written contracts to furnish dogs for the greyhound racing meet scheduled to commence on July 3, 1975, at Flagler Kennel Club and under the terms

and provisions of said contracts the defendants are obligated to supply the dogs pursuant to the contracts and not to take any action which would interfere with the conduct of the meet. The State of Florida has a financial interest in the taxes to be derived from the conduct of the scheduled race meet, and is suffering a loss of tax revenue of $64,000.00 per day and for each and every day that the said defendants fail to comply with their contracts. In addition, plaintiff is suffering irreparable damage by reason of its inability to operate its racing program because of the greyhound owners' refusal to perform their contracts, and the economy of this area is materially affected as in excess of 600 employees of the kennel club are suffering a loss of employment.

3. The obligations required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattels or product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law. The balance of convenience and the public interest and the irretrievable loss of income from taxation to the State of Florida all distate [sic] that the relief sought should be granted.

4. Plaintiff's application for a temporay mandatory injunction is hereby granted and the individual defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, Chester Culbreath, Pat Dalton, Paul J. Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Bradford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven

Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Fry, Jack Wilson and Francis Fulginiti, having contracts with the plaintiff to supply dogs for the meet scheduled to commence on July 3, 1975, are hereby ordered and directed to forthwith comply with said contracts and to furnish dogs to the plaintiff for the conduct of the aforesaid race meet in accordance with the contracts with the plaintiff and with statutes, rules and regulations of the State of Florida governing greyhound racing and pari-mutuel betting.

5. The defendant dog owners named in this order are directed to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A.M. on July 4, 1975.

6. In the event that the defendants or any of them do not file their entries for the Saturday matinee for July 5, 1975, by 10:00 o'clock A.M. on July 4, 1975, or if, having filed their entries, they fail and refuse to supply their dogs for the Saturday matinee of July 5, 1975, or any date allocated for racing subsequent to July 5, 1975, then the dogs located and kenneled at the compound of the Florida Kennels, Inc. shall be sequestered and PERRINE PALMER shall take possession and control of said dogs and all trucks and equipment utilized in performing said contracts and shall enter and race said dogs in accordance with this order for the account of the respective defendant owners, and the costs and fees incident to such services shall be assessed againt the disobedient partie.

7. It further appearing to the Court that irreparable damage and loss will result not only to the plaintiff but to

the State of Florida and the people of Dade County, and such exigencies require and dictate an early disposition of this matter, to that end the defendants are ordered and directed to file their answers to the complaint by July 11, 1975.

8. The defendants, and each of them, are hereby temporarily enjoined and restrained until the further order of this Court from removing any greyhounds now kenneled at the Florida Kennels, Inc. from said location, and the Florida Kennels, Inc. is hereby notified that it shall not permit the removal of any of said greyhounds from said compound.

9. Plaintiff, as principal, and a surety company, authorized to do business in the State of Florida, as surety, shall file with the Clerk of this Court as soon as the Clerk's office is open for business on Monday, July 7, 1975, a bond to be approved by the Clerk of this Court in the sum of $25,000.00, conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain by reason of the issuance of this temporary mandatory injunction if this injunction is dissolved or the complaint dismissed.

DONE AND ORDERED at Miami, Dade County, Florida, this 3 day of July, 1975 at 6:10 P.M.

HARVIE S. DUVAL

Circuit Judge

STATE OF FLORIDA)
COUNTY OF DADE)

This Copy is a true copy of the Original on file in this Office. Witness my hand and Official Seal, This 3 day of July A.D., 1975.

RICHARD P. BRINKER
Clerk Circuit Court

By: R. Swerdloff, D.C.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA.

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY, FLORIDA,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC., etc., et al.,

Defendant.

**AMENDMENT TO ORDER
APPOINTING RECEIVER**

It having been made to appear to the Court that the order and judgment of this Court rendered on July 3, 1975, has not been complied with by the Defendants to whom it was directed, and, therefore, Perrine Palmer has assumed his duties as Receiver of this Court, it is, thereupon,

CONSIDERED, ORDERED and ADJUDGED that Perrine Palmer, as such Receiver, is under the duty to forthwith take possession of the dogs in the eighteen (18) kennels belonging to the Defendants which are located in the Florida Kennels Incorporated compound, and he is empowered to make entry by whatever means may be necessary to each of said kennels in order to inventory the dogs and the equipment which he is required to take into his custody. In the event the employees of such kennel owners decline or refuse to care for said greyhounds, to

feed and to attend to their needs, then the said Receiver is empowered and directed to employ such employees as he may obtain to properly care for and feed the said animals, and he is empowered to do all things necessary and required to accomplish and comply with the directions herein contained, and he is authorized and empowered to take such action as may be necessary or required to protect the said animals from harm or injury by the Defendants or their employees. The said Receiver is authorized to borrow such money as may be necessary in order to accomplish the performance of his duties, and the funds so borrowed are hereby made a first lien upon the greyhounds for whose benefit such indebtedness was incurred.

The trainers and dog handlers employed by the Defendants to feed and administer to the needs of the greyhounds which are located at Florida Kennels, Inc., are hereby ordered to continue to feed and care for said animals and that if not paid for their services by the owners, Defendants herein, they will be paid by the Receiver for their services and all such fees paid shall constitute a lien on the greyhounds in the custody of the Receiver. That the failure of any trainer or dog handler to feed and care for said animals after being requested to do so by the Receiver or his employees, agents or servants, will place themselves in the position of being in contempt of this Court, and to be dealt with in accordance with law. That all trainers and dog handlers employed by the Defendants herein are hereby enjoined from interfering in any manner whatsoever with the Receiver or his agents, servants or employees, and are hereby ordered to cooperate with the Receiver in order to see that the greyhounds in question are properly cared for.

That any illness or injury to any dog caused by the refusal of the Defendants or their trainer, handlers or other employees to comply with this Order shall be the sole responsibility of said Defendant owners herein.

That any and all veterinarians who have been treating or will be treating any dog or dogs owned by the Defendants located on the property of Florida Kennels, Inc., are hereby ordered to continue the said care of said dog or dogs and in the event their bill for services is not paid by the owners, it shall be paid by the Receiver and shall constitute a lien on said greyhound for whose benefit said indebtedness was incurred.

That all Sheriffs, Police Chiefs and other law enforcement officers are hereby ordered to cooperate with the Receiver and to take whatever action is necessary to prevent violence and to allow the Receiver and his agents, servants or employees to carry out his duties.

The said Receiver is directed to appear before this Court at 12:00 noon on Monday, July 7, 1975, to report his acts and doings in the premises and to report to this Court any actions engaged in by the Defendants or their employees seeking to obstruct the preformance by the Receiver of his duties as herein set forth.

DONE and ORDERED at Miami, Dade County, Florida, this 4th day of July, 1975.

A True Copy

Harvie S. DuVal

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS, &
BREEDERS ASSOCIATION, INC., etc., et al.,
Defendants.

FURTHER AMENDMENT TO ORDER APPOINTING RECEIVER

Upon application of the Defendants who have been served herein who own kennels and after hearing, upon notice to the parties, and the Court being fully advised in the premises, it is

ORDERED that this Court's Order styled "Amendment to Order Appointing Receiver" dated July 4, 1975, be and the same hereby is amended as set forth below, that the Receiver is directed to appear before this Court on Monday, July 7, 1975, at 12 noon, to report on his performance in accordance with the orders of the Court as set forth in prior orders and pursuant to this Order, and it is

FURTHER ORDERED that the Order dated July 3, 1975, Paragraphs 6 and 8, is hereby amended to permit the return *instanter* to the Defendants the possession and control of the dogs kenneled at Florida Kennels, Inc., and upon the Defendants taking possession and control of said dogs, the Receiver shall have no further obligation for their care, protection and conservation, but shall monitor ingress and egress of the dogs attached and identified in the Complaint herein and shall not permit their removal without the permission of the Receiver or his duly authorized representative and the Receiver is relieved of the responsibility to race said dogs pending further Order of this Court.

DONE AND ORDERED in Dade County, Florida, on July 5, 1975, at 5:17 P.M.

A True Copy

Harvie S. DuVal

HARVIE S. DuVAL
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY FLORIDA,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC. etc., et al.,

Defendants.

CONTEMPT NOTICE

TO: SYLVAN HOLTZMAN, ESQ.
8585 Sunset Drive
South Miami, Florida 33156

PETTIGREW & BAILEY
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131

Attorneys for Defendants

YOU ARE NOTIFIED that Plaintiffs will apply to the Honorable Harvie S. DuVal, Circuit Judge, on Monday, July 7, 1975, at 12:00 noon in the Dade County Courthouse at Miami, Florida, for an order adjudging the Defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, Chester Culbreath, Pat Dalton, Paul J. Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Brad-

ford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Frey, Jack Wilson and Francis Fulginiti, in contempt of Court for violation of the terms of the order or judgment entered and rendered by this Court on July 3, 1975, for failing to comply with the mandatory order of said Court which required said Defendants and each of them to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A.M. on July 4, 1975, and for failing to comply with the mandatory order or judgment of this Court to supply dogs for the racing meet scheduled to commence on July 3, 1975, at the Flagler Kennel Club.

I certify that a copy hereof has been furnished to the above-named addressees by personal delivery on this 5th day of July, 1975.

SIBLEY, GIBLIN, LEVENSON
& WARD
P.O. Box 390360
Miami Beach, Florida 33139
and
PATTON, KANNER, NADEAU,
SEGAL, ZELLER & LaPORTE
150 S.E. 2nd Avenue
Miami, Florida
Attorneys for Plaintiff
West Flagler Associates, Ltd.

By: Stuart W. Patton

STUART W. PATTON
(Of Counsel)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al.,
Defendants.

CONTEMPT ORDER

This cause coming on to be heard upon the Contempt Notice filed by the plaintiff on July 5, 1975, and served upon the attorneys for the defendants on said date, and the defendants, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, Woodrow Blackwell, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, Chester Culbreath, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall, Al Moskovits, Stephen Merlock, Frances Fulginiti, C. O. Means, Paul Discolo and J. W. Ewalt, were personally before this Court represented by their attorneys, Sylvan Holtzman and Richard Pettigrew.

This Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The

Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:

1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.

2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this Court of July 3, 1975. The reasons advanced by each of the defendants for not obeying this Court's order are deemed insufficient.

3. That each of the defendants named in the first paragraph above is hereby adjudged to be in contempt of this Court for his wilful failure to obey the Court's order of July 3, 1975, and for failure to comply with his contract with the plaintiff and each is hereby fined Seventy-Five Hundred Dollars ($7,500.00) for the wilful contempt of the Court's order of July 3, 1975.

4. That upon failure to pay the above said fine by 12:00 Noon on July 8, 1975, each of the said defendants, with the exception of C. O. Means, J. W. Ewalt, Woodrow Blackwell, Chester Culbreath and Al Moskovits,

is remanded to the custody of the Sheriff of Dade County, Florida, to be confined in the Dade County jail until the above assessed fine has been paid.

5. That each of said defendants named in the first paragraph is hereby directed to pay a fine of Twenty-Five Hundred Dollars ($2,500.00) per day for each and every racing day hereafter in which he fails to obey the order of this Court of July 3, 1975, and to return his dogs to Flagler Kennel Club for racing as heretofore ordered.

6. That each defendant confined to the county jail by this order may purge himself and may be immediately released from confinement upon the payment of the above said fine, plus any additional fines ordered hereafter to be paid.

7. That the defendants, C. O. Means, Woodrow Blackwell, Chester Culbreath, J. W. Ewalt and Al Moskovits, for reasons of health, are not remanded to the custody of the Sheriff but are directed forthwith to pay said fines, and failing to do so, said defendants are enjoined and restrained from racing any greyhounds owned by them in the State of Florida.

8. Any defendant may purge himself of this contempt by immediately agreeing to comply with his contract to return his dogs for racing at Flagler Kennel Club prior to confinement. Agreement to comply with the defendant's contract after the commencement of confinement will not purge said defendant of contempt.

9. The said fine of Seventy-Five Hundred Dollars ($7,500.00) shall be payable to the Clerk of the Circuit Court of Dade County, Florida.

10. The daily fine of Twenty-Five Hundred Dollars ($2,500.00) as assessed against each of the aforesaid defendants shall be payable for each and every racing day hereafter for which said defendant fails to comply with the order of this Court and the said fines shall be paid to the office of the Clerk of the Circuit Court of Dade County, Florida, at 10:00 A.M. on each and every succeeding racing day that said defendant shall fail to comply with the order of this Court. [Deleted by court]

11. Should any defendant herein fail to pay before 10:00 A.M. on each succeeding racing day, the fine of Twenty-Five Hundred Dollars ($2,500.00) hereby imposed on each and every racing day hereafter that they may be

in default of the order of this Court, a writ of attachment may issue forthwith to produce any such defendant before the Court. [Deleted by court]

12. The Court will be in session at 12:00 Noon on each and every day hereafter (except Saturday and Sunday) until further order of this Court, for the purpose of hearing any notice of contempt for failure of said defendants to comply with this order of July 3, 1975.

DONE AND ORDERED at Miami, Dade County, Florida, this 8th day of July, 1975.

Harvie S. DuVal

Circuit Judge

STATE OF FLORIDA)
COUNTY OF DADE)

This Copy is a true Copy of the Original on file in this Office. WITNESS my hand and Official Seal. This 8 day of July A.D., 1975.

RICHARD P. BRINKER
Clerk Circuit Court

By: L. Bernard

D.C.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

No. 75-20902 Judge DuVal

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al
Defendants.

ORDER REAFFIRMING TEMPORARY MANDATORY INJUNCTION OF JULY 3, 1975, AND DENYING VARIOUS MOTIONS OF THE DEFENDANTS

On July 3, 1975, this Court sat for the purpose of hearing the application for mandatory injunction of the plaintiffs. At the convening of the Court, the defendants, through their attorneys, Richard Pettigrew and Sylvan Holtzman, announced to the Court that they had filed a petition to remove the suit to the United States District Court. The Court announced that it would proceed with the hearing and the defendants asked leave to remove themselves from the courtroom and their request for removal was granted. The Court then considered the pleadings and the testimony submitted by the State of Florida, County of Dade and the plaintiff, West Flagler Associates, Ltd.

At 6:00 o'clock P.M. on July 3, 1975, the Court was served with an order of Judge C. Clyde Atkins of the United States District Court remanding said cause to the Circuit Court of Dade County, Florida, whereupon the Court then entered its order of July 3, 1975, at 6:10 o'clock P.M. ordering and directing the defendants, and each of them, to comply with the terms of their contracts. This Court on July 4, 1975, entered an amendment to the order appointing the receiver, in which this Court directed the defendants, and each of them, to feed and care for their animals which were located at Florida Kennels, Inc. and placed in the legal custody of Perrine Palmer, the receiver appointed by this Court. Said order further provided that by failure to comply with the order of the Court the said defendants place themselves in the position of being in contempt of this Court.

It further appears to the Court that application was made by attorneys for the defendants to amend the order of July 4, 1975, and this Court did on July 5, 1975, further amend said order.

The Court on July 5, 1975, further advised the defendants that if they wished to present any motions or evidence at the contempt hearing scheduled for July 7, 1975, commencing at 12:00 Noon, that it would consider any motions or evidence they wished to offer.

On July 7, 1975, pursuant to the Court's announcement of July 5, 1975, the defendants filed a motion to dissolve the injunction, a motion to dismiss the complaint, a motion to quash service of process or to dismiss for lack of jurisdiction and a demand for jury trial. At the hearing on July 7, 1975, the plaintiff and the State of Florida

and Dade County resubmitted in substance the evidence that had been offered in support of the temporary mandatory injunction of July 3, 1975, and the defendants participated therein and cross examined plaintiff's witnesses and submitted testimony in their own behalf. In the course of that hearing as the situation presented itself, the several motions filed by the defendants were orally denied. The Court having heard the testimony, evidence and argument of counsel and being fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That the defendants' motion to dissolve the injunction be and the same is hereby denied.

2. That the defendants' motion to dismiss be and the same is hereby denied.

3. That the defendants' motion to quash service of process or to dismiss for lack of jurisdiction be and the same is hereby denied.

4. That the defendants' demand for jury trial be and the same is hereby denied.

5. That the temporary mandatory injunction order of July 3, 1975, is hereby approved, ratified and confirmed and republished as of this July 7, 1975 as an order of this Court.

This order is entered nunc pro tunc, as of July 7, 1975.

DONE AND ORDERED this 10th day of July,
at Miami, Dade County, Florida.

/s/ Harvie S. DuVal

CIRCUIT JUDGE

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-631

GEORGE ALDER, et al.,
Petitioners,

vs.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,
Respondents.

BRIEF OF WEST FLAGLER ASSOCIATES, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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BRIEF OF WEST FLAGLER ASSOCIATES, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The petition for certiorari attempts to leave the impression that the petitioners were tried in absentia and that they were adjudged in contempt of court and incarcerated without a hearing and opportunity to be heard, thus depriving them of due process of law.

A mild characterization of the position taken by the petitioners would be that it is completely contrary to the record which clearly discloses that they participated in a trial, offered testimony and cross examined witnesses prior to being adjudged in contempt of court. It was only after an extended hearing on July 7, 1975, and affirmance of the order of July 3, 1975, and admissions in open court by petitioners that they had knowledge of the order and that their violations were willful and deliberate that they were adjudged in contempt.

Because of the manner in which the petition for certiorari is presented and the difficulty in gleaning from it what, in fact, occurred, this respondent finds it necessary to restate what was involved and the sequence of events leading up to the order complained of.[1]

RESTATEMENT OF THE CASE

West Flagler Associates, Ltd. is the owner and operator of one of three greyhound racing facilities located in Dade County, Florida. It instituted suit against the petitioners and others in the Circuit Court of Dade County, Florida, seeking a temporary and permanent mandatory injunction requiring the petitioners and others to comply with valid existing contracts for the furnishing of greyhounds to race at Flagler Kennel Club for the race meet scheduled to commence July 3, 1975.

Upon the filing of the suit the State of Florida and Metropolitan Dade County moved to and were allowed to intervene in the proceedings as parties plaintiff.

The sworn complaint in this case and the relief therein sought is traditionally one within the realm of equity jurisdiction and the relief therein prayed for is traditionally granted by a court of equity.

The prayer of the sworn complaint was (a) that a temporary injunction issue without notice against the defendants from removing the dogs under contract to Flagler from the jurisdiction, (b) that the individual defendants having contracts with the plaintiff to supply dogs be ordered and directed by temporary mandatory injunction

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1. Respondent in this brief, when referring to the appendix of the petitioners' brief, will refer to it as PA ____, and the appendix to this brief will be referred to as RA ____.

to perform their contracts, (c) that the defendants be required to show on a short day to be fixed by the court why the court should not decree specific performance of the contracts and (d) in the event of refusal to perform as ordered by the court that the dogs be sequestered. Other and additional relief was sought which is not material to the instant proceeding.

The sworn complaint in substance briefly alleged as follows (RA 25):

(a) That plaintiff was a limited partnership organized and existing under the laws of the State of Florida and the operator of Flagler Kennel Club under a license granted by the State of Florida.

(b) That Flagler was licensed to operate from July 3, 1975, through September 4, 1975, and from November 1, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. The period of the contracts between Flagler and the kennel owners and operators encompassed the dates in question for which Flagler had been granted a license by the State of Florida. That the contracts were identical as to form and copies of three of the form contracts were attached to the complaint with the allegation that the balance of the executed contracts would be produced in court at the proper time.

(c) That the several kennel owners by their contracts expressly covenanted and agreed not to take any action which would be detrimental to the track operator and greyhound racing, specifically that he would not "directly or indirectly * * * participate in, aid, encourage, or do any act or thing to impede, delay, interrupt, disrupt, or bring about a temporary or permanent cessation or suspension of racing during any racing meeting within the period of time covered by this contract * * *."

(d) That in the last racing year the State of Florida received from Flagler in excess of $5,700,000.00 in tax revenues. That under Rule 7E-2.26(1) of the Department of Business Regulation (the state regulatory body), the greyhounds had to be schooled and that the kennel owners and operators were required to present their dogs for schooling in June for the race meet commencing July 3, 1975. On June 10, 1975, the defendants sent to the plaintiff a notice, a copy of which was attached to the complaint, advising that they would not present their dogs for schooling, knowing that such refusal would prevent Flagler from conducting its race program under its license from the State of Florida, opening July 3, 1975.

(e) That unless the defendant kennel owners having contracts with Flagler were compelled to perform their contracts Flagler would not be able to operate its race program commencing on July 3, 1975, and that there was no reasonable expectation that the bulk of such program could be conducted. The complaint alleged that the defendants by their contracts were obligated to supply a chattel of unique character, namely racing greyhounds which were not obtainable in the open market and that the plaintiff would be unable to obtain contracts from others for the supply of racing greyhounds.

(f) That plaintiff's business depended upon performance of said contracts by said defendant kennel owners and their failure to comply with these agreements would cost the plaintiff the loss of its business and deny it the right to conduct its business as authorized by the State of Florida.

(g) Paragraph 21 alleges the irreparable injury that would be suffered by the plaintiff, the loss of revenue to the state, the adverse effect upon the labor force in Dade County and loss of revenue to such employees, and

that each day lost could never be replaced in view of the competition and date assignments made to the other dog tracks in the Dade and Broward County areas.

(h) That the dogs which were under contract were being kenneled in Dade County, Florida, and that if the defendant kennel owners received notice of any application to restrain their removal from the jurisdiction that the kennel owners would cause the dogs to be removed from the jurisdiction, thereby frustrating compulsory performance of the contracts to the irreparable damage of the plaintiff.

Pursuant to the sworn complaint, the court on June 30, 1975, without notice, issued a temporary injunction which was limited to removal of the dogs from the jurisdiction (RA 35). At the time of the issuance of that temporary injunction, the court also ordered a hearing to be had on July 3, 1975, for the purpose of determining whether or not a temporary mandatory injunction should issue as prayed.

On July 3, 1975, some of the defendants and their counsel appeared as directed and announced that they had filed a petition for removal to the federal court and that they would not participate in the hearing and requested leave to withdraw, which was granted.

The federal court at 5:55 P.M. on July 3, 1975, of its own motion while the state court was still in session, remanded the cause to the state court. The lower court at 6:10 P.M. on July 3, 1975, and after the remand, entered an order granting the temporary mandatory injunction (RA 41). That order, after making findings of fact and determining that irreparable damage would result if the relief prayed was not granted, directed immediate compliance by the dog owners with the contracts by filing of

entries not later than July 4, 1975, at 10:00 A.M. It further provided that in the event of the refusal of the owners to file entries that Perrine Palmer take custody and control of the dogs for the purpose of running them for the account of the owners and fixing July 11, 1975, as the date upon which the defendants were required to file their answers to the complaint.

The kennel owners failed and refused to submit their entries as required by the order of July 3, 1975, and Perrine Palmer attempted to take custody, control and management of the dogs. Because of the number of the dogs and inability to get adequate help, a hearing was had at the home of the circuit judge at the instigation of the receiver on July 5, 1975. Custody of the dogs was directed to be returned to the kennel owners under the supervision of the receiver. At the said time the court informed the defendants that a contempt hearing would be had on Monday, July 7, 1975, commencing at 12:00 Noon, and that prior to such contempt hearing the court would hear and entertain any motions or evidence which the defendants might care to adduce.

The defendants, upon the morning of July 7, 1975, filed a notice of interlocutory appeal to the District Court of Appeal for the Third District of Florida.[2]

The defendants appeared before the trial court on July 7, 1975, and presented and argued several motions, (a) a motion to dissolve the injunction, (b) motions to dismiss, (c) motions to quash and (d) motion challenging jurisdiction of the court, alleging that jurisdiction had been lost by the filing of the notice of appeal to the Third District Court, which were, in the course of the hearing, denied.

---

2. The District Court of Appeal in Florida are intermediate appellate courts.

Early in that trial proceeding it was ascertained by the court which of the defendants were present in court. Their names were read by the clerk and they responded as being present (RA 44).

West Flagler, the State of Florida and Dade County then proceeded to call the same witnesses and present the same evidence which had been given at the hearing of July 3, 1975 (in which the defendants elected not to participate). The defendants' attorneys cross examined the plaintiff's witnesses, challenged the documentation and offered evidence on their own behalf.

The court at the conclusion of that hearing reaffirmed and republished the order of July 3, 1975. The court then considered the allegations of contempt by the individual kennel owners as scheduled by the court on July 5, 1975, for July 7, 1975.

The individual kennel owners were called to the stand and each was interrogated concerning knowledge of the order of July 3, 1975, and their willful refusal to comply with it. Most of the defendants unequivocally, if not arrogantly, acknowledged that they had knowledge of the order and that they had willfully and deliberately failed and refused to comply with that order.

The dog owners so admitting their willful and deliberate violation (with the page of the transcript of July 7, 1975) are: F. B. Stutz (218), James L. Frey (235), Charles M. Leavy (261), Wayne Strong (272), Woodrow Blackwell (294), George Alder (299), Charles R. Holzschuher (303), Jack Wilson (306, 307), Pat Dalton (309), Lester Cole (312), Richard Jordan (320), Chester Culbreath (323), J. E. O'Donnell (327), Paul Haenel (331), Earl Hall (339), Steven Merlock (349), C. O. Means (354), Francis Fulginiti (358), Paul J. Discolo (384, 385), and J. W. Ewalt (388).

Illustrative of their responses is the testimony of but some of the defendants (RA 47-50).

Some of the owners who were adjudged in contempt of court equivocated concerning knowledge of the order and their deliberate violation of it. The owners as to whom there was any question of their knowledge of the order were acquitted of the charge. The contempt order was formally entered July 8, 1975 (RA 51).

Following the court's oral announcement on July 7, 1975, when it reaffirmed its order of July 3, 1975, and found the dog owners in contempt, petitioners, pursuant to the notice of interlocutory appeal filed on the morning of July 7, 1975, obtained an emergency hearing in the District Court of Appeal, Third District, on July 8, 1975. They there sought a stay of the proceedings solely upon the ground that the Circuit Court had lost jurisdiction with the filing of the notice of appeal. No application was ever made to either the Circuit Court or in the Court of Appeals for a supersedeas.

The Court of Appeals, following that argument and on July 8, 1975, denied petitioners' application for stay (RA 54), and on July 9, 1975 entered an order advancing the cause (RA 55).

Petitioners then went immediately to the Supreme Court of Florida and obtained ex parte from one of the justices a writ of habeas corpus on July 10, 1975 (RA 36).

The Supreme Court of Florida on July 10, 1975, directed the respondents to make return to the writ on July 16, 1975, and set the cause for hearing on July 21, 1975 (PA 58).

Respondents filed a motion to quash and discharge the writ of habeas corpus and oral argument was had in the Supreme Court of Florida on July 21, 1975.

On July 21, 1975, the Supreme Court of Florida entered its opinion and order in *Wilson* v. *Sandstrom,* 317 So. 2d 732 (Fla. 1975). In the course of that opinion the Supreme Court of Florida said:

> "At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975 the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding."

The Supreme Court of Florida in the closing paragraphs of its opinion said:

> "In summary, we hold that all of the orders entered by the trial court were proper under the circumstances and without error. The writ of habeas corpus is discharged and the petitioners therein are remanded to the custody of the respondent, such incarceration to begin on Tuesday, July 22, 1975, at 5:00 P.M."

Petitioners filed an extended petition for rehearing (PA 22). The Supreme Court of Florida on July 29, 1975, denied the petition for rehearing, saying:

> "Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein, including claims for damages for an improperly issued temporary injunction and the enforcement thereof."

Following the opinion of the Supreme Court of Florida directing discharge of the writ of habeas corpus and order-

ing petitioners to return for incarceration, the dog owners apparently concluded that discretion was the better part of valor and elected to resume racing their dogs as provided for in the contracts and thereupon were released from the order of incarceration. They resumed racing their dogs for the balance of the Flagler meeting which terminated in September 1975.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Summary of Argument

A. THE PETITION FOR THE WRIT RAISES NO SUBSTANTIAL FEDERAL QUESTION OF NATIONAL IMPORTANCE UNDER 28 U.S.C.A. § 1257(3).

B. THE OPINION AND JUDGMENT OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS PREVIOUSLY ISSUED WITHOUT NOTICE DID NOT CONSTITUTE A FINAL JUDGMENT AND IS NOT REVIEWABLE BY CERTIORARI.

C. THE OPINION AND ORDER OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS WAS A DISCRETIONARY ACTION AND THIS COURT WILL NOT AS A MATTER OF LAW REVIEW DISCRETIONARY ORDERS ON CERTIORARI.

D. THE ORDER OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS HAS BECOME MOOT AND, THEREFORE, IS NOT REVIEWABLE ON CERTIORARI.

ARGUMENT

A. The Petition for the Writ Raises No Substantial Federal Question of National Importance Under 28 U.S.C.A. § 1257(3).

The initial injunctive order which was issued without notice and in accordance with state law only enjoined the petitioners from removing their dogs from the jurisdiction of the court. This was necessary and was done pursuant to the sworn allegations of the complaint and testimony for the obvious reason that the dogs were a unique commodity and if they were to be removed from the jurisdiction of the court they could not be replaced or obtained elsewhere. The end result of that would be that any further orders directed to the dogs' owners would have been virtual nullities and the jurisdiction and power of the court would have been circumvented by simply removing the dogs from the jurisdiction of the court.

Not one of these suppliers of greyhounds sought to procure the cancellation of his or her contract with the tract. Not one of such suppliers sought to be released from his or her contract. These suppliers sought the court's sanction of their unlawful combination and conspiracy to collectively refuse to supply the greyhounds, thereby placing the track and the state under severe economic pressure in an effort to force the track to pay a greater price for the use of the greyhounds. Such a combination or conspiracy is unlawful under the laws of the State of Florida. Section 542.05, Fla. Stat. provides in part as follows:

> "(1) Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations

of persons or of either two or more of them, for either, any or all of the following purposes:

"(a) To create or carry out restrictions in trade or commerce or aids to commerce, or to free pursuit of any business authorized or permitted by the laws of this state;"

When the injunctive order was entered on June 30, 1975, it was served upon counsel for the defendants and notice of an injunctive hearing on July 3, 1975, was given.

Counsel for the defendants, or at least some of them, appeared before the court and announced that they had that day filed a petition for removal of the cause to the federal court and refused to participate further in the proceedings. This petition for removal "on behalf of the defendants" (PA 77) constituted a general appearance. With leave of court they left the courtroom and the court proceeded to hear evidence and testimony offered by the plaintiff in support of the application for mandatory temporary injunction. Later the same day the federal district court of its own motion, and prior to any action by the state court, remanded the cause to the state court. The order of remand (PA 85) recites that the cause was remanded, "* * * it appearing from the face of the petition that there is no jurisdiction under Title 28, U.S.C., Section 1441." Apart from the order of the district court remanding the cause, it is apparent upon the record that there never was any valid removal in the first instance as the mandatory requirement of the filing of a removal bond was not complied with. Petitioners did not file a bond; they filed in lieu of a bond a cashier's check (RA 40). A cashier's check is not a bond and does not satisfy the requirement of the statutes relating to removal. *Proteus Foods and Industries, Inc.* v. *Nippon Reizo Kabushiki Kaisha* (D.C.N.Y.), 279 F. Supp. 876.

The injunctive order of July 3, 1975, while predicated upon testimony and evidence adduced between the voluntary departure of petitioners' counsel and the entry of the order of remand by the federal district court, was not void and it was not entered until after the remand. Furthermore, the order of July 3, 1975, in nowise involved any contempt adjudication. The order of July 3, 1975, simply ordered and directed the defendants to file the entries for their dogs with the racing secretary of Flagler no later than 10:00 A.M. on July 4, 1975, for races to commence on July 5, 1975. It also only further provided that if they did not voluntarily file their entries that Perrine Palmer would take possession and operate the dogs for the account of the respective owners.

Because of physical limitations upon the receiver and the number of dogs involved, the receiver obtained a hearing with the court at his home on July 5, 1975, at which time, with all counsel present, the court directed that control of the dogs, subject to the supervision of the receiver, be returned to the dog owners.

On July 5, 1975, the attorneys for Flagler also served on the defendants' counsel a notice for a contempt hearing to be held on Monday, July 7, 1975, and the court advised the defendants that on July 7, 1975, it would hear any motions or evidence which the defendants desired to offer. Prior to the contempt hearing on July 7, 1975, the defendants filed several motions, viz.: motion to dismiss the complaint, motion to dissolve the injunction, motion to quash service and demand for jury trial (PA 104). These motions likewise all constituted general appearances.

On July 7, 1975, and prior to adjudication of contempt, considerable evidence and testimony was taken. In fact, the respondents, including the State of Florida, offered virtually the same evidence that had been previously of-

fered on July 3, 1975. Petitioners' counsel not only examined and cross examined the plaintiff's witnesses, but offered testimony on their own behalf. It was only after that evidentiary hearing had been concluded and the court reiterated its order of July 3, 1975, that the contempt proceedings were had.

As above pointed out the dog owners were immediately called and acknowledged that they had had notice of the order of July 3, 1975, and that they had willfully and deliberately violated same by refusing to file with the racing secretary their dogs for racing on July 4, 1975. That contempt order (RA 51) recites in part as follows:

> "The Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:
>
> "1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.
>
> "2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this Court of July 3, 1975. The reasons advanced

by each of the defendants for not obeying this Court's order are deemed insufficient."

Petitioners' claim of lack of jurisdiction and the voidness of the order of July 3, 1975, is but a "red herring" that has been injected out of desperation. The petitioners were merely playing games with the court to further delay the opening of the race meet.

Petitioners' contention that the court lacked jurisdiction and that the injunctive order of July 3, 1975, was void rather than voidable because of the sham removal to the federal district court, was answered by the opinion of the Supreme Court of Florida in *Wilson* v. *Sandstrom*, 317 So. 2d 372 (1975), Text 741, with a quotation from *76 C.J.S.* (Removal of Causes), § 239.

Furthermore, all of the testimony and evidence presented on July 3, 1975, was again presented at the July 7, 1975, hearing in which petitioners' counsel participated, cross examined and offered evidence in their own behalf.

The basic question was, did they have notice of the court's order of July 3, 1975, and willfully refuse to obey it. This the dog owners readily admitted.

Petitioners recognize that injunctive orders must be obeyed, even though erroneous or improper, until such time as they are reversed by orderly and proper proceedings. *Maness* v. *Meyers*, 419 U.S. 449. However, they say that the trial court lacked jurisdiction solely upon the abortive petition for removal. They cite no cases in support of their petition other than *In re Petition of Green*, 369 U.S. 689. In citing and quoting from this case petitioners overlook informing the Court that this was a matter which was by statute exclusively within the jurisdiction of the National Labor Relations Board.

There can be no question under Florida law as to the jurisdiction of the circuit courts of the State of Florida over the subject matter or its authority to issue temporary injunctions with or without notice. This applies equally to temporary mandatory injunctions. *Kellerman* v. *Chase & Co.*, 135 So. 127 (Fla. 1931). (See Supreme Court of Florida opinion in the instant case, 317 So. 2d 732, Text 736.)

In *Hill, Darlington & Grimm* v. *Duggar*, 177 So. 2d 734 (DCA 2d 1965), the court stated the rule regarding the conduct of parties relating to injunctive orders when it quoted from *Ex Parte Lennon*, 166 U.S. 548, 17 S. Ct. 658, 41 L. Ed. 1110, as follows:

> " 'The facts that petitioner was not a party to such suit, nor served with process of subpoena, nor had notice of the application made by the complainant for the mandatory injunction, nor was served by the officers of the court with such injunction, are immaterial so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice. * * *' "

When petitioners willfully violated the terms of the injunctive order of July 3, 1975, rather than comply with the terms thereof, they were cited for contempt. After hearing the testimony and ascertaining by the petitioners' own admissions that they had full knowledge of the court's injunctive order of July 3, 1975 and willfully disobeyed said order, the court was left with no alternative but to hold the petitioners in contempt of court. As the Su-

preme Court of Florida said in *Seaboard Air Line Ry. Co.* v. *Tampa Southern R. Co.*, 135 So. 529 (Fla. 1931):

> "For, while the power to punish for contempt of a civil or criminal nature is to be sparingly used, it is a necessary and integral part of the judicial power, and is abolutely essential to the performance of the duties imposed by law upon courts of equity. Without it, such courts are mere boards of arbitration whose judgments and decrees are only advisory.
>
> "If a party can make himself a judge of the validity of orders which have been issued for the protection of property rights, and by his own act of disobedience can set them aside, then are the courts impotent, and what the Constitution of the state ordains as the judicial power becomes a mere mockery."

The court further said:

> "Such an injunction should be obeyed as such as long as it is in force, and the court should not permit a party charged with violating it to say in defense that the equities of the case were with the violator, and that the court was wrong in entering the injunction in the first place."

See also: *State ex rel. Buckner et al.* v. *Culbreath*, 3 So. 2d 380 (Fla. 1941).

In support of the position that the incarceration for contempt violated the Thirteenth Amendment, petitioners rely entirely upon *Pollack* v. *Williams*, 322 U.S. 4 (1944). That case is nowise in point as it involved a conviction under a Florida statute which made it a fraud to obtain money in advance for the performance of services and failure to perform. That has nothing whatever to do with incarceration for contempt of court. The power to incar-

cerate for contempt of court has long been established as a necessary adjunct to the court's power. *Ex parte Earman*, 95 So. 761 (Fla. 1923). Without this power the dignity and integrity of the court could not be maintained and its authority would become a hollow shell and reduce the court to the status of an arbitration board.

Petitioners then aver that the civil rights cases have something to do with the situation. How or in what manner petitioners' civil rights could be violated by an order of court which decreed specific performance of a contract voluntarily entered into is difficult to fathom.

Petitioners also urge as a ground for the granting of the petition that the court refused to hear their defenses. It is significant that they wholly fail to point out what defenses they tendered and the court refused to hear. Petitioners were given every opportunity to present any and all defenses, both to the issuance of the temporary injunction as well as the contempt proceeding. At the first hearing they elected to stand upon the abortive removal and refused to participate in the proceedings. Upon remand and at the hearing of July 7, 1975, they were again afforded every opportunity, and at that time they did participate in all phases of the proceeding. The defenses which petitioners are talking about did not relate to the issue before the court, viz.: the right to temporary mandatory injunction or the contempt proceedings. The claimed defenses related to the case on the merits as is evidenced by the record (PA 104) and a reading of the opinion of the Supreme Court of Florida. There was some intimation that the petitioners were deprived of their constitutional rights because the court refused to give them a jury trial on the contempt.

There is no constitutional right to a jury trial in a contempt proceeding. In fact, statutes purporting to confer

the right to jury trial in contempt proceedings have been adjudicated unconstitutional on the ground that they interfered with inherent power of the court in contempt proceedings. *17 Am. Jur. 2d* (Contempt) 64, § 64.

B. The Opinion and Judgment of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Previously Issued Without Notice Did Not Constitute a Final Judgment and Is Not Reviewable by Certiorari.

The Supreme Court of Florida in *Wilson* v. *Sandstrom*, 317 So. 2d 732, discharged a writ of habeas corpus which it had previously issued without notice. That opinion and judgment of the state court is not final for the purposes of a review by certiorari, and this Court will only review on certiorari final judgments or decrees. *32 Am. Jur. 2d* (Federal Practice and Procedure) 709, § 245, and authorities cited. The fact that the judgment is not final is further evidenced by charges made in the petition (page 13) wherein it is said:

> "* * * but the Court apparently recanted much, if not all, its decision by saying that its July 21st opinion was 'not res judicata' and preserving to petitioners the theoretical future right to litigate all issues, including even damages for wrongful issuance of injunction."

A judgment which involves a new trial or further proceedings in the lower court is not a final judgment of the appellate court and is, therefore, not reviewable by the Supreme Court. *North Dakota State Board of Pharmacy* v. *Snyders Drug Stores, Inc.*, 414 U.S. 156; *Urie* v. *Thompson*, 337 U.S. 163; Annotations: 89 L. Ed. 1188; 97 L. Ed. 212.

Since the order sought to be reviewed is not final, the court lacks jurisdiction to review it on certiorari and the petition should be denied.

Civil contempt orders are not appealable. *In re Manufacturers Trading Corporation* (C.C.A. 6, 1952), 194 F. 2d 948. It follows that if a civil contempt order is not appealable under Rule 54(a), it is not reviewable by certiorari.

C. The Opinion and Order of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Was a Discretionary Action and This Court Will Not As a Matter of Law Review Discretionary Orders on Certiorari.

A judgment or order in habeas corpus proceedings is reviewable only if expressly provided for by statute and it is generally held that no appeal or writ of error will be allowed from a judgment remanding or discharging the prisoner in habeas corpus proceedings. *Wilkinson* v. *Lee*, 138 Ga. 360, 75 S. E. 477.

In *39 Am. Jur. 2d* 299, § 168, it is said:

> "The general rule that the action of the trial court as to matters within its judicial discretion will not be disturbed unless there is a clear abuse thereof applies to actions and rulings on questions of law and fact in habeas corpus proceedings."

The principle that decisions involving contempt of court are not appealable is extended to a writ of habeas corpus in contempt cases. *39 Am. Jur. 2d* (Habeas Corpus) 302, § 172.

The actions of the trial court with respect to issuance, denial or discharge of a writ of habeas corpus are matters of discretion and will not be disturbed in the absence of a clear abuse of such discretion.

Traditionally, appellate courts will not review or disturb discretionary rulings of the lower courts. *Brown* v. *United States,* 359 U.S. 41; *36 C.J.S.* (Federal Courts) 671, § 204(21).

D. The Order of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Has Become Moot and, Therefore, Is Not Reviewable on Certiorari.

The law is well established that this Court will not review, deal with or pass upon moot, abstract or academic questions. *32 Am. Jur. 2d* (Federal Practice and Procedure) 760, § 294, and authorities cited. A real or substantial federal question is essential to the jurisdiction of the United States Supreme Court over judgments of a supreme court of a state or where it is most conjectural whether a party has been deprived of any constitutional right or where the question has become moot.

In the instant case and following the decision of the Supreme Court of Florida, the petitioners elected to resume racing rather than face incarceration under the order which found them guilty of contempt. Since incarceration for contempt is no longer an issue, the basic question presented is now moot.

In referring to the opinion of the Supreme Court of Florida, on rehearing petitioners say:

> "Just what 'main proceeding' the court thought remained is unknown. This case, filed on June 30, 1975, was over on July 29, 1975."

The above statement is wholly incorrect as the main case is not only still pending, but petitioners have filed counterclaims and crossclaims and brought in third parties

defendant. This could be readily shown if it were to be permissible to bring to this Court matters which are dehors the record.

CONCLUSION

The short incarceration for contempt of court in no-wise involved any involuntary servitude or violation of the Thirteenth Amendment. There is no substantial federal question presented and the interlocutory order of the Supreme Court of Florida is not reviewable by certiorari as a matter of law, and the petition for certiorari should be denied.

Respectfully submitted,

MARION E. SIBLEY

HERBERT L. NADEAU

SIBLEY, GIBLIN, LEVENSON & WARD
P.O. Box 390360
Miami Beach, Florida 33139

and

PATTON, KANNER, NADEAU, SEGAL,
ZELLER & LAPORTE
150 S. E. 2nd Avenue
Miami, Florida 33131

Attorneys for West Flagler Associates, Ltd.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that three copies of the foregoing brief of West Flagler Associates, Ltd. in opposition to petition for writ of certiorari to the Supreme Court of Florida were mailed to Pettigrew & Bailey, Attorneys for Petitioners, 1820 One Biscayne Tower, Miami, Florida 33131; Hon. Stuart Simon, County Attorney, 1626 Courthouse, Miami, Florida 33130; and Hon. Robert L. Shevin, Attorney General, The Capitol, Tallahassee, Florida 32304, this ..... day of ....., 1975.

HERBERT L. NADEAU

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

No. 76-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida

Plaintiff

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, etc. et al

Defendants

EXCERPTS FROM SWORN COMPLAINT

1. The plaintiff is the holder of a pari-mutuel permit issued by the State of Florida pursuant to a referendum in the County of Dade, and licensed by the Department of Business Regulation of the State of Florida, under and pursuant to the Florida Statutes, to conduct greyhound racing meets during the calendar years 1975, 1976 and 1977 at its track in Miami, Florida.

2. The plaintiff has been assigned racing dates by the Department of Business Regulation and is licensed to operate and conduct said meet from July 3, 1975, through September 4, 1975, and from November 7, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. Pursuant to the contract hereinafter referred to and in accordance with the prior course of dealings between the plaintiff

and the defendant contract holders, actual notice has been given to said contract holders to present their racing dogs for schooling on June 23, 1975.

3. The following named defendants are not employees of the plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the 1975 greyhound racing season of the plaintiff commencing July 3, 1975, and ending September 4, 1975:

B. W. Bashaway
Chester Culbreath
Pat Dalton
Earl Hall
C. O. Means
Duane Randle
Joseph Villella
Paul Haenel
Joe LaCroix
Wayne Strong

The contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, B. W. Bashaway, is attached hereto as Exhibit A, and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

4. The following named defendants are not employees of plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the greyhound racing season for the period

commencing July 3, 1975, and their contracts expire on September 4, 1976:

George Alder (Jordan-Alder Kennel)

Earl Baxter

Woodrow Blackwell

Lester Cole

C. R. Holzschuher

Al Moskovits (Medley Farm, Inc.)

Ray Randle

F. B. Stutz

James L. Frey (White Shadows Kennel)

Jack Wilson

Francis Fulginiti

The contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, George Alder, is attached hereto as Exhibit B, and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

5. The following named defendants are not employees of plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the greyhound racing season for the period commencing July 3, 1975, and their contracts expire on September 4, 1977:

Richard F. Andrews

Carroll Blair (C.C. and C.E. Blair Kennel)

Paul J. Discolo

J. W. Ewalt

Bradford Cochrane (Ivory Tower Kennel)

Dick Jordan

Charles M. Leavy

Steven Merlock (M-F Kennel)

J. E. O'Donnell

These contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, Richard F. Andrews, is attached hereto as Exhibit C. and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

6. Each of said contracts obligates the defendants to supply to the track of the plaintiff in Miami, Florida, Flagler Kennel Club, certain racing greyhounds which are required for the conduct of races at said track under the rules and regulations of the Division of Pari-Mutuel Wagering of the Department of Business Regulation.

7. In consideration of the contractual obligations of the defendants under their contracts, the plaintiff granted exclusive right to the defendant dog owners to race their dogs at West Flagler in competition which is limited only to other dog owners similarly under contract, and agreed to furnish purses for the benefit of the defendants. The amount of the purses as paid during the year immediately preceding was the sum of $1,695,000.00. These purses are divided among the individual defendants in the manner that is specified in the contract.

9. In recognition of the importance to the plaintiff and the State of Florida in making dogs available for

racing as provided for in said contracts, the following provision is in each of said contracts:

> "7. Throughout each entire racing meeting within the period of time covered by this contract the KENNEL OWNER and any and all persons acting under his authority shall fully comply with the decisions of the Racing Officials, and all of the rules and regulations of the TRACT OPERATOR, together with the rules and regulations of the State agency regulating Greyhound Racing, and also all the laws of the State of Florida, and they and each of them will not in any manner do any act or thing detrimental to the best interests of the TRACT OPERATOR and Greyhound Racing. Specifically, the KENNEL OWNER agrees for himself and all acting by or under his authority, directly or indirectly, that they will not participate in, aid, encourage, or do any act or thing to impede, delay, interrupt, disrupt, or bring about a temporary or permanent cessation or suspension of racing during any racing meeting within the period of time covered by this contract, and that they, and each of them, will not molest, abuse, insult, impede, obstruct, interfere with or interrupt any agent, servant, or employee of the TRACK OPERATOR and of any Greyhound Owner or other persons participating in any way in any racing meeting of TRACK OPERATOR during the life of this contract either at the racing plant of the TRACK OPERATOR, or at the places of business or homes of such other person or persons or at any time or place while such other person or persons are in transit between their places of business and homes and the racing plant of TRACK OPERATOR."

12. The State of Florida is a third party beneficiary of the individual contracts between the plaintiff and the defendants and has a decided interest in the conduct of the race meets and the mutuel handle by reason of the fact that the State of Florida by law and regulation taxes and receives seven per cent of the pari-mutuel pool generated from public betting at the plaintiff's dog track, which percentage constitutes a signficant source of revenue to the State of Florida and its citizens, thus making the subject of this suit a matter of great public importance. The seven per cent paid to the State of Florida by the plaintiff last year amounted to in excess of $5,700,000.00 which is approximately 13 per cent of the total revenue from dog track pari-mutuel operations generated in the State of Florida.

13. Rule 7E-2.26(1) of the Department of Business Regulation governing greyhound racing provides as follows:

> "Greyhounds must be properly schooled and must, in the opinion of the Judges, be sufficiently experienced before they can be entered or started. Any greyhound that has not been entered for a period of six (6) racing days, and/or has not been raced for a period of ten (10) racing days or more, must be schooled at least once at its racing weight before being eligible for entry. No hand schooling will be considered official.

14. Notwithstanding the obligations of each of said individual defendants having separate and independent contracts with the plaintiff, the defendants have wilfully and wantonly violated their contracts by not presenting their dogs for schooling on June 28, 1975, as required by the aforementioned rule and paragraph 3 of their con-

tracts. On June 10, 1975, said defendants sent to the plaintiff a notice a copy of which is attached hereto as Exhibit D, which said notice in nowise complies with the rule and is silent as to why the defendants would not present their dogs for schooling on June 28, 1975. The defendants were well aware that their individual and collective breach of their contracts will prevent plaintiff from conducting its racing program under its license from the State of Florida and from fulfilling its obligations to the Department of Business Regulation.

16. Plaintiff alleges upon information and belief that a large number of the individual defendants are members of FGOBA and all are members of NGA, and that said corporation, association and members acting collectively, and through its officers, have conspired to induce each of the individual defendants to violate their respective contracts with the plaintiff and have induced the individual defendants to boycott plaintiff's track and refuse to furnish dogs for schooling as required by the rules, and that they have refused to present their dogs for schooling as required on June 28, 1975, and will refuse to supply dogs for the meet commencing July 3, 1975. The defendants, FGOBA and NGA through their officers and directors have tortiously sought to and have interfered with the performance by the dog kennels who are in contract with the plaintiff of their obligations and duties under their valid existing contracts.

17. The defendants individually and collectively and the said corporation and unincorporated association have already refused to furnish dogs to the dog track in Monticello, Florida, and the track in Monticello has obtained an injunction which ordered the defendants holding contracts to perform under the terms of those contracts. A copy of that injunctive order is attached hereto as Exhibit

E. The kennel owners who refused to school their dogs at Monticello have been adjudicated in contempt of the Circuit Court of Leon County, Florida, for failure to comply with the order of the court.

19. As a result of the wilful and wanton violation of contracts by the individual defendants, the boycott and conspiracy between them and FGOBA and NGA and other dog owners who are members of said corporation or association or subject to their control and inducement, plaintiff will not be able to conduct its race meet scheduled to begin July 3, 1975, and plaintiff has no reasonable expectation that any such program can be conducted for the balance of the current race meet or any extension or renewal thereof. The defendants are required by their contracts to supply to the plaintiff a chattel of unusual and unique character; namely, racing greyhounds which are not readily obtainable in the open market; and therefore, plaintiff would be unable to obtain contracts from other persons to supply racing greyhounds. The greyhounds to be furnished by the kennel owners have been trained to perform before the public and are trained to chase a mechanical lure. The greyhounds are required to be registered and such registration is not obtainable unless the pedigree of the greyhounds complies with all the standards fixed by the American Kennel Club and/or the National Greyhound Association. The American Kennel Club does not register racing greyhounds. NGA will not register racing greyhounds unless the dog is owned by an NGA member. NGA is the principal conspirator in inducing certain of the defendants from performing their contracts. The plaintiff has relied upon the contracts with the kennel owners above named to furnish to it the number and character of greyhounds described in said contracts. The operation of the plaintiff's business de-

pends upon the performance of said contracts by said defendant kennel owners. Their failure to comply with their agreements causes the plaintiff the loss of its business and denies to the plaintiff the right to conduct said business as authorized by the Board of Business Regulation and by the State of Florida. There are 186 different kennels operating in the State of Florida. Through their membership in NGA and interlocking membership in FGOBA the refusal of the defendants to perform their service makes impossible the providing of greyhound race dogs at West Flagler Kennel Club for the performance of the race meet as authorized and directed by the State of Florida.

20. The rules of the Board of Business Regulation require that the greyhounds to be supplied by the kennel owners under their contracts be registered with the National Greyhound Association or the American Kennel Club. The said contracts require the defendant kennel owners to deliver to the plaintiff the registration papers of each greyhound contracted for under the terms of said agreements. The greyhounds forming the subject matter of said contracts are all kenneled in Dade County, Florida, and in fact many of the greyhounds under contract are kenneled at property owned jointly by the four local greyhound track operators. Many of these greyhounds are recognized as outstanding stars in the greyhound racing field and are famous for their accomplishments on the race track.

21. In addition to the injury suffered by plaintiff, others will suffer irreparable injury if the above defendants are not enjoined from further contract violations. It is presently impossible to establish the full amount of damage that would flow therefrom. Among other things, plaintiff employs a substantial labor force in Dade County, Florida, provides entertainment for thousands of

Florida residents and generates a significant amount of tax money for the State of Florida. Properly schooled racing dogs are absolutely essential to the conduct of the race meet, and unless the above defendants are enjoined from further contract violations, great and irreparable harm will be done to the public welfare. This great harm could not properly be compensated by an award of damages.

22. Each day upon which the plaintiff is deprived of racing greyhounds for the conduct of its racing programs plaintiff suffers irreparable damage because each day lost can never be replaced in view of the competition and the date assignments by the Department of Business Regulation between its race meets and the race meets conducted by the other greyhound race tracks in the Dade and Broward County areas. The nature of the business is such that the longer the racing program is inoperative, the greater harm to plaintiff and less likelihood that it can ever be remedied.

23. Plaintiff has no adequate remedy at law as only specific performance by the defendants of their duties and obligations to the plaintiff under the contracts by supplying greyhounds for its racing programs will constitute a full and adequate remedy.

24. The dogs under contract at West Flagler are currently being kenneled in Dade County, Florida and are within the jurisdiction of this Court. A list of the dogs by kennel and name is attached hereto as Exhibit F. Seventeen of the kennels of dogs are at Florida Kennels in Hialeah, and the remaining dogs are in the possession, custody and control of private kennel owners.

(Caption Omitted)

TEMPORARY INJUNCTION WITHOUT NOTICE

This cause came on to be heard upon the sworn complaint of the plaintiff which seeks in part a temporary injunction, without notice, enjoining and restraining, until further order of this Court, the defendant greyhound owners and kennel operators from removing from the jurisdiction of this Court any racing greyhounds owned, leased or controlled by the defendant kennel owners and operators, shown on a list thereof in Exhibit F to the complaint, and third parties having custody thereof from delivering or surrendering to the owners or lessees or any agents or representatives of the owners or lessees of any of the dogs in their possession listed in Exhibit F to the complaint, and the Court from the sworn complaint and evidence presented finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the injury and damage apprehended as hereinafter set forth and as alleged in the complaint will occur unless an injunction be granted without notice.

2. The contracts required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattel and product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law.

3. The plaintiff's application for temporary injunction and apprehension that the defendant kennel owners will remove the racing greyhounds from the jurisdiction of this Court if they were to be given notice of any application for such an injunction or other relief is well founded

and irreparable damage and harm would result if the racing greyhounds were to be removed from the jurisdiction and such injunctive relief is necessary and essential to insure complete relief to the plaintiff.

Accordingly, the defendant greyhound owners and kennel operators enumerated in the complaint are hereby enjoined until further order of the Court from removing from the jurisdiction of this Court any of the dogs owned, leased or controlled by them and enumerated and listed in Exhibit F to the complaint. If any of the dogs listed are not within the custody and control of the defendant greyhound owners, their kennels or officers and agents of said defendants but rather in the possession and custody of third parties, then such third parties having custody and control of such greyhounds and actual notice of this order are enjoined until further order of this Court from delivering and surrendering possession of any of the named dogs to any of the defendants or to any officers, agents or representatives of the defendants or any of them. Likewise the said defendants are enjoined from receiving delivery thereof.

4. This injunctive order shall become effective immediately, provided, however, that the plaintiff is ordered and directed to file with the Clerk of this Court, on or before July 1, 1975, a bond to be approved by the Clerk of this Court with the plaintiff as principal and a surety company qualified to do business in the State of Florida, as surety, payable to the defendants in the penal sum of $5000 and conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain or may have been put to by reason of the issuance of this temporary mandatory injunction if this temporary injunction is dissolved or the cause dismissed.

5. That service upon Sylvan Holtzman, Attorney at Law, of a copy of this injunctive order and a copy of the complaint shall constitute good and sufficient service of this injunctive order upon all of the defendant dog owners and shall constitute notice to them of the issuance of this injunctive order. Service upon any persons not named as parties defendant herein and who have care, custody or control of any of the dogs enumerated in Exhibit F shall be effected by delivery to them of a copy of this injunctive order.

DONE AND ORDERED at Miami, Dade County, Florida, this 30th day of June, 1975.

s/ Harvie S. Duval
Circuit Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

WEST FLAGLER ASSOCIATES, LTD., a Limited Partnership, organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LaCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON and FRANCIS FULGINITI,

Defendants.

BOND FOR REMOVAL

KNOW ALL MEN BY THESE PRESENTS, that the Defendants who have been served are held jointly and severally and firmly bound unto Plaintiff in the penal sum of Five Hundred Dollars ($500.00), lawful money of the United States of America.

The obligation of the bond is conditioned on the improper removal of Case No. 75-20902 from the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, to this Court. If the above case is adjudicated to be non-removable or improperly removed, this bond shall satisfy all duly compensable costs and disbursements. Otherwise, this bond shall be null and void and returned to the makers.

The above named and served Defendants, by their attorneys, Pettigrew and Bailey

By /s/ Bruce W. Greer

Cashier's Check No. 215420 ($500)
Surety

63-436
660

CITY NATIONAL BANK OF MIAMI

No 215420

MIAMI, FLORIDA July 3, 1975.

PAY TO THE ORDER OF Clerk, United States District Court * * *$500.00

CITY NAT'L BANK $500 AND 00 CTS

CASHIER'S CHECK

Pettigrew & Bailey

Maria G. Bower
AUTHORIZED SIGNATURE

⑈02154 20⑈ ⑆0660⑈0436⑆

PURCHASER EXCHANGE $ ISSUED BY _____

40

(Caption Omitted)

ORDER GRANTING TEMPORARY MANDATORY INJUNCTION

This cause came on to be heard upon the sworn complaint of the plaintiff for a temporary mandatory injunction after notice to the defendants, and upon consideration of the sworn complaint and the evidence presented to the Court, the Court finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the equities are with the plaintiff and against the defendants.

2. That the individual dog owners named in the sworn complaint have written contracts to furnish dogs for the greyhound racing meet scheduled to commence on July 3, 1975, at Flagler Kennel Club and under the terms and provisions of said contracts the defendants are obligated to supply the dogs pursuant to the contracts and not to take any action which would interfere with the conduct of the meet. The State of Florida has a financial interest in the taxes to be derived from the conduct of the scheduled race meet, and is suffering a loss of tax revenue of $64,000.00 per day and for each and every day that the said defendants fail to comply with their contracts. In addition, plaintiff is suffering irreparable damage by reason of its inability to operate its racing program because of the greyhound owners' refusal to perform their contracts, and the economy of this area is materially affected as in excess of 600 employees of the kennel club are suffering a loss of employment.

3. The obligations required to be performed by the defendants, namely, the supply of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattels or product which cannot be readily supplanted

or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law. The balance of convenience and the public interest and the irretrievable loss of income from taxation to the State of Florida all dictate that the relief sought should be granted.

4. Plaintiff's application for a temporary mandatory injunction is hereby granted and the individual defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, .Chester Culbreath, Pat Dalton, Paul J Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Bradford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Frey, Jack Wilson and Francis Fulginiti, having contracts with the plaintiff to supply dogs for the meet scheduled to commence on July 3, 1975, are hereby ordered and directed to forthwith comply with said contracts and to furnish dogs to the plaintiff for the conduct of the aforesaid race meet in accordance with the contracts with the plaintiff and with statutes, rules and regulations of the State of Florida governing greyhound racing and pari-mutuel betting.

5. The defendant dog owners named in this order are directed to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A. M. on July 4, 1975.

6. In the event that the defendants or any of them do not file their entries for the Saturday matinee for July 5, 1975, by 10:00 o'clock A.M. on July 4, 1975, or, itf, having filed their entries, they fail and refuse to supply their dogs for the Saturday matinee of July 5, 1975, or

any date allocated for racing subsequent to July 5, 1975, then the dogs located and kenneled at the compound of the Florida Kennels, Inc. shall be sequestered and PERRINE PALMER shall take possession and control of said dogs and all trucks and equipment utilized in performing said contracts and shall enter and race said dogs in accordance with this order for the account of the respective defendant owners, and the costs and fees incident to such services shall be assessed against the disobedient parties.

7. It further appearing to the Court that irreparable damage and loss will result not only to the plaintiff but to the State of Florida and the people of Dade County, and such exigencies require and dictate an early disposition of this matter, to that end the defendants are ordered and directed to file their answers to the complaint by July 11, 1975.

8. The defendants, and each of them, are hereby temporarily enjoined and restrained until the further order of this Court from removing any greyhounds now kenneled at the Florida Kennels, Inc. from said location, and the Florida Kennels, Inc. is hereby notified that it shall not permit the removal of any of said greyhounds from said compound.

9. Plaintiff, as principal, and a surety company, authorized to do business in the State of Florida, as surety, shall file with the Clerk of this Court as soon as the Clerk's office is open for business on Monday, July 7, 1975, a bond to be approved by the Clerk of this Court in the sum of $25,000.00, conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain by reason of the issuance of this temporary mandatory injunction if this injunction is dissolved or the complaint dismissed.

DONE AND ORDERED at Miami, Dade County, Florida, this 3 day of July, 1975 at 6:10 P.M.

s/ Harvie S. DuVal
Circuit Judge

(Circuit Court Caption Omitted)

EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF JULY 7, 1975

(Tr. 8-12)

The Clerk: Is the Florida Greyhound Owners & Breeders Association represented?

Mr. Fulton: Yes.

The Court: What is your name, sir?

Mr. Fulton: George Fulton, F-u-l-t-o-n.

Mr. Pettigrew: Your Honor, for clarification, the names that I have read to your Honor refer to those in the contempt notice and not the Breeders Association, their directors or the National—

The Court: I understand.

The Clerk: Marc Hill?

Arthur Bobrick?

Bill Forrest?

Glenn R. Campbell, Jr.?

Charles B. Medlen?

The Court: Gentlemen, let me suggest this. If any of these names called are here and do not answer, you will be in contempt of Court. Now do not sit there idly with your teeth closed if you are here.

The Clerk: Robert F. Niemeyer?

Mr. Niemeyer: Present.

The Clerk: F. B. Stutz?

Mr. Stutz: Here.

The Clerk: O. K. Duke, Jr.?

G. A. Alderson?

The Court: Put a check by the ones that do not answer or the other way around, whichever way you want to do it.

The Clerk: E. L. Moses?

George J. Fulton?

Mr. Fulton: Here.

The Clerk: A. L. Hauck?

James L. Frey?

Mr. Frey: Present.

The Clerk: H. N. Simmons?

Robert E. Mendheim?

James E. McKeehan?

National Greyhound Associatien, an unincorporated association?

Robert E. Thomas?

National Greyhound Association?

Richard F. Andrews?

Mr. Andrews: Here.

The Clerk: B. W. Bashoway?

Mr. Bashoway: Here.

The Clerk: Earl Baxter?

Woodrow Blackwell?

Mr. Blackwell: Here.

The Clerk: Carroll Blair?

Lester Cole?

Mr. Cole: Here.

The Clerk: Chester Culbreath?

Mr. Culbreath: Here.

The Clerk: Pat Dalton?

Mr. Dalton: Present.

The Clerk: Paul Discolo?

Mr. Discolo: Here.

The Clerk: J. W. Ewalt?

Mr. Ewalt: Present.
The Clerk: Paul Hanel?
Mr. Haenel: Present.
The Clerk: Earl Hall?
Mr. Hall: Present.
The Clerk: C. R. Holzschurer?
Mr. Holzschurer: Here.
The Clerk: Bradford Cochrane?
Mr. Cochrane: Here.
The Clerk: Dick Jordan?
Mr. Jordan: Present.
The Clerk: George Alder?
Mr. Alder: Here.
The Clerk: Joe LaCroix?
Charles M. Leavy?
Mr. Leavy: Here.
The Clerk: F. B. Stutz?
Mr. Stutz: Here.
The Clerk: C. O. Means?
Mr. Means: Here.
The Clerk: Al Moskovits?
Mr. Moskovits: Here.
The Clerk: Steven Merlock?
Mr. Merlock: Here.
The Clerk: J. E. O'Donnell?
Mr. O'Donnell: Present.
The Clerk: Duane Randle?
Ray Randle?
Wayne Strong?
Mr. Strong: Present.
The Clerk: Joseph Villella?
Mr. Villella: Here.
The Clerk: James L. Frey?
Mr. Frey: Present.
The Clerk: Jack Wilson?

Mr. Wilson: Here.
The Clerk: Francis Fulginiti?
Mr. Fulginiti: Here.
The Clerk: That is all, Judge.

F. B. STUTZ (Tr. 217, 218)

Q. The opening night of July 3rd. Did you present the Racing Secretary with the names of the dogs you had ready to run on that occasion?

A. No, sir, I did not.

Q. Did you submit on July 4th, prior to 10 o'clock a.m., the names of the dogs to be run on July 5th?

A. No, sir.

Q. Have you submitted the names of or have you submitted any dogs for running on either July 3, 4, or 5?

A. No, sir.

• • •

Q. Well the court had directed you to, did it not?
A. Yes, sir.
Q. You disobeyed that order, did you not?
A. Yes, sir, in that sense.
Q. Did you do it willfully?
A. Yes, sir.

JAMES L. FREY (Tr. 229, 230)

Q. Did you submit your individual entries for the race program scheduled to be run on July 3, 1975?

A. No, I did not.

Q. Did you submit dogs on July 3rd to race on the night of July 3rd at West Flagler Kennel Club?

A. No.

Q. Did you submit entries on or before July 4th for the race schedule for July 5, 1975?

A. No, I did not.

Q. Did you submit your dogs at the track on July 4th to run on July 4th?

A. No.

Q. Did you submit your dogs for racing on July 5th?

A. No, sir.

Q. Did you have knowledge of the order of this Court of July 3rd directing you to submit your entries before 10 o'clock on July 4th and to submit your dogs for racing on July 5th at the matinee?

A. Yes, I did.

Q. Did you obey that order?

A. No, I did not.

CHARLES M. LEAVY (Tr. 260, 261)

By Mr. Patton:

Q. Did you furnish to West Flagler Kennel Club, Mr. Leavy, your list of dogs in early June to run at the meeting beginning July 3, 1975?

A. Yes, I did.

Q. Did you present your dogs for schooling on the evening of July 28, 1975?

A. No, I did not.

Q. Did you submit your dogs or the entries of the list of dogs to race as scheduled to be held on July 3, 1975?

A. No, I did not.

Q. Did you submit the entries on the morning of July 4th for 10 a.m. for the matinee races to begin in the afternoon of July 5, 1975?

A. No, I did not.

Q. Did you submit your dogs for racing on any of the events on either July 3rd, 4th, or 5th?

A. No, I did not, sir.

Q. Did you have knowledge of the Court's order of July 3, 1975, directing you to submit your entries by 10 o'clock on July 4th and to submit your dogs to race for the matinee on July 5th?

A. Yes, sir.

* * *

The Witness: I refused to obey the order. I had no deliberation or intent or maliciousness involved.

WAYNE STRONG (Tr. 271, 272)

By Mr. Patton:

Q. Mr. Strong, state your name.

A. Full name, Harold Wayne Strong.

Q. Are you one of the individuals who has a contract with West Flagler, which has been identified as Exhibit 1?

A. Yes, sir.

Q. Did you furnish to West Flagler Kennel Club a list of your dogs in early June to run for the season beginning July 3, 1975?

A. Yes, sir.

Q. Did you present your dogs for schooling on June 28, 1975?

A. No, sir.

Q. Did you present your dogs or your list of dogs for entries for the race scheduled to begin July 3, 1975?

A. No, sir.

Q. Did you present your dogs for racing on the evening of July 3, 1975?

A. No, sir.

Q. Did you submit your list of entries of the dogs for racing to begin—to be held on the matinee of July 5th by 10 o'clock a.m. on July 4th?

A. No, sir.

Q. Did you submit your dogs for racing on either of the three days, "June" 3rd, "June" 4th, or "June" 5th of 1975?

A. No, sir.

Q. Did you willfully and deliberately refuse to—Wait —Did you have knowledge of the Court's order of June 3, 1975, ordering you to submit your entries by 10 o'clock on July 4th for the matinee on July 5th of '75?

A. Yes sir.

Q. Did you willfully refuse to obey that order?

A. Yes, sir.

Mr. Patton: That is all.

GEORGE ALDER (Tr. 299)

Q. Did you submit your dogs for racing on the night of July 3, 1975?

A. I did not.

Q. Did you submit your dogs for racing on the night of July 3, 1975?

A. I did not.

Q. Did you submit entries prior to the deadline as stated of 10 o'clock on July 4th for the races on July 5th?

A. I did not.

Q. Did you have knowledge of the court's order of "June" 3, 1975, which directed that you should comply with your contract and, secondly, that you would submit—that you submit your entries by 10 o'clock on July 4th for the races for the matinee of July 5, 1975?

A. I did receive it.

Q. Did you willfully refuse to obey that order?

A. I did.

Mr. Patton: That is all.

(Circuit Court Caption Omitted)

CONTEMPT ORDER

This cause coming on to be heard upon the Contempt Notice filed by the plaintiff on July 5, 1975, and served upon the attorneys for the defendants on said date, and the defendants, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, Woodrow Blackwell, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, Chester Culbreath, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall, Al Moskovits, Stephen Merlock, Frances Fulginiti, C. O. Means, Paul Discolo and J. W. Ewalt, were personally before this Court represented by their attorneys, Sylvan Holtzman and Richard Pettigrew.

This Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:

1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.

2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this

Court of July 3, 1975. The reasons advanced by each of the defendants for not obeying this Court's order are deemed insufficient.

3. That each of the defendants named in the first paragraph above is hereby adjudged to be in contempt of this Court for his wilful failure to obey the Court's order of July 3, 1975, and for failure to comply with his contract with the plaintiff and each is hereby fined Seventy-Five Hundred Dollars ($7,500.00) for the wilful contempt of the Court's order of July 3, 1975.

4. That upon failure to pay the above said fine by 12:00 Noon on July 8, 1975, each of the said defendants, with the exception of C. O. Means, J. W. Ewalt, Woodrow Blackwell, Chester Culbreath and Al Moskovits, is remanded to the custody of the Sheriff of Dade County, Florida, to be confined in the Dade County jail until the above assessed fine has been paid.

5. That each of said defendants named in the first paragraph is hereby directed to pay a fine of Twenty-Five Hundred Dollars ($2,500.00) per day for each and every racing day hereafter in which he fails to obey the order of this Court of July 3, 1975, and to return his dogs to Flagler Kennel Club for racing as heretofore ordered.

6. That each defendant confined to the county jail by this order may purge himself and may be immediately released from confinement upon the payment of the above said fine, plus any additional fines ordered hereafter to be paid.

7. That the defendants, C. O. Means, Woodrow Blackwell, Chester Culbreath, J. W. Ewalt and Al Moskovits, for reasons of health, are not remanded to the custody of the Sheriff but are directed forthwith to pay said fines,

and failing to do so, said defendants are enjoined and restrained from racing any greyhounds owned by them in the State of Florida.

8. Any defendant may purge himself of this contempt by immediately agreeing to comply with his contract to return his dogs for racing at Flagler Kennel Club prior to confinement. Agreement to comply with the defendant's contract after the commencement of confinement will not purge said defendant of contempt unless paid.

9. The said fine of Seventy-Five Hundred Dollars ($7,500.00) shall be payable to the Clerk of the Circuit Court of Dade County, Florida.

* * *

12. The Court will be in session at 12:00 Noon on each and every day hereafter (except Saturday and Sunday) until further order of this Court, for the purpose of hearing any notice of contempt for failure of said defendants to comply with the order of July 3, 1975.

DONE AND ORDERED at Miami, Dade County, Florida, this 8th day of July, 1975.

s/ Harvie S. DuVal
Circuit Judge

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1975

TUESDAY, JULY 8, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,
Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,
Appellee.

Counsel for appellants having filed in this cause emergency motion to quash and/or stay preliminary mandatory injunctions requiring, *ex parte* and without evidentiary or legal support specific performance of personal service contracts, the emergency being grounded upon the orally announced jailing of defendants for non-adherence to involuntary servitude, and the court having considered same, it is ordered that said motion is denied.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District
By /s/ (Illegible)
Chief Deputy Clerk

cc: Pettigrew & Bailey
Patton, Kanner, Nadeau, Segal, Zeller & LaPorte
Sibley, Giblin, Levenson & Ward
Stuart Simon
/pld

(Caption Omitted)

WEDNESDAY, JULY 9, 1975

CASE NO. 75-1068

This matter having come on for hearing before the court after notice, on appellants' emergency motion to stay proceedings pending appeal, and the court having considered same, after hearing oral argument of counsel thereon, it is ordered that said motion is hereby denied.

It is further ordered that this appeal shall be advanced in accordance with the agreement of counsel for early disposition and their agreement to submit the appeal upon briefs already filed. The State of Florida is allowed to file a brief on or before July 14, 1975 and appellants are granted to July 16, 1975 to respond to the state's brief. No further oral argument will be allowed.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District

By /s/ (Illegible)
Chief Deputy Clerk

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Patton, Kanner, Nadeau, Segal,
Zeller & LaPorte
Stuart L. Simon
Robert L. Shevin
Harvie S. DuVal
/h

IN THE SUPREME COURT OF FLORIDA

July term A.D. 1975

Thursday, July 10, 1975

No. 47,674

JACK WILSON, et al
Petitioners

vs.

JACK SANDSTROM, Director, Department
of Corrections and Rehabilitation,
Dade County, Florida
Respondent

Upon consideration of petitioner's motion to release petitioners on recognizance or alternatively motion for bond, said motion is granted and it is

Ordered that petitioners be released upon their own recognizance pending disposition of the cause in this court.

cc Jack Sandstrom
Richard Pettigrew
Harvie DuVal

(Caption omitted)

WRIT OF HABEAS CORPUS

In the name and by the State of Florida.

To: Honorable Jack Sandstrom, Director, Department of Correction and Rehabilitation.

Greetings:

Petitioners have filed in this court petitions for writ of habeas corpus charging that they are illegally detained in a prison by you. You are hereby commanded to make return to this writ on or before July 16, 1975, showing lawful cause and authority for the detention and imprisonment of the petitioners and thereafter comply with the order of this court in the matter. Petitioners' reply brief is due July 21, 1975, and it is further ordered that this case is set down for hearing on Monday, July 21, 1975, at 9:30 A.M.

Witness the Hon. James C. Adkins, Chief Justice of the Supreme Court of Florida and sealed in said court at Tallahassee, the Capitol, on this the 10th day of July 1975.

cc Jack Sandstrom
Richard Pettigrew
Harvie DuVal

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1975

No. 631

GEORGE ALDER,
et al.,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and
Rehabilitation, Dade County, Florida, et al.,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Respondent, State of Florida on relation of Robert L. Shevin, Attorney General of Florida, moves this Court for an order denying this Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Petitioners and the Respondent, West Flagler Associates, Ltd., are licensees of the Florida Division of Pari-Mutuel Wagering. Absent the express statutory authoriztion and largesse of Chapter 550, Florida Statutes, neither party could legally operate their respective businesses.

The Petitioners have all signed contracts with the Respondent West Flagler to provide a certain number of greyhounds during specified West Flagler racing dates. The "handle" or amount bet by the public at West Flagler for the 1974 racing season was $79,824,524. The State of Florida received approximately $5,859,919.88 for the 1974 - 75 fiscal year from the West Flagler track operation.

West Flagler has been awarded the pertinent racing dates of July 3, 1975 - September 4, 1975. The racing dates in this South Florida area are awarded, and operated by the various tracks so as to include the entire calendar year. Another Miami greyhound track was scheduled and did open on September 5, 1975.

Respondent, West Flagler, owner and operator of a greyhound racing facility, filed a verified complaint in the 11th Florida Judicial Circuit on June 30, 1975, seeking a temporary and permanent injunction against Petitioners to comply with the contracts between Petitioners and West Flagler. Among other terms, the contracts required Petitioners to provide a product - greyhounds - to race at the West Flagler Kennel Club commencing July 3, 1975. The injunctive relief was

premised upon specific performance of the contract and Petitioners allegedly tortious and conspiratorial actions in violation of Ch. 542, Florida Statutes [anti-trust].

The temporary relief sought by West Flagler consisted of: 1) a temporary injunction without notice against Petitioners removing the greyhounds, under contract to West Flagler, from the Court's jurisdiction; 3) a temporary mandatory injunction requiring the Petitioners having contracts with West Flagler to produce the greyhounds contracted for by West Flagler; 3) a request to sequester the greyhounds if necessary, and 4) other additional relief.

The State of Florida and Dade County were granted status as party Intervenors-Plaintiffs on July 3, 1975. The State of Florida's interest in the non-operation of the greyhound track was two-fold; 1) a $64,000/day revenue loss; and 2) the public confidence in the State's ability to properly regulate and control the pari-mutuel industry. Dade County's interest existed in the money derived from the pari-mutuel system.

On June 30, 1975, West Flagler was granted an ex parte injunction against Petitioner removing contracted greyhounds from the circuit court's jurisdiction. A $5,000 bond was provided. A hearing was also set for July 3, 1975, on the mandatory temporary injunction.

Petitioners appeared at the July 3, hearing to announce that a petition for removal had been filed. The circuit court granted their request not to participate and to leave. The circuit court then heard testimony from the state's witnesses and the

West Flagler witnesses,

The federal court at 5:55 p.m. on July 3, 1975, sua sponte remanded the case. The circuit court entered its order granting the mandatory temporary injunction at 6:10 p.m. on July 3, 1975. The order further recited that: (a) The Court has jurisdiction of the subject matter and the parties and the equities were with the Respondents - Plaintiffs and against the Petitioner - Defendants. (b) The individual kennel owners had written contracts to furnish dogs for the July 3, 1975, racing meet; the State of Florida is suffering an irretrievable daily tax revenue loss of $64,000; plaintiff would be irreparably damaged by the kennel owners' nonperformance and "the economy of this area is materially affected." (c) The contracts involve special and unique chattels not replaceable; denial of the mandatory injunction would irreparably damage West Flagler; and "the balance of convenience and public interest" compelled a ruling for West Flagler. (d) The application for temporary mandatory injunction was granted; the 30 contracting kennel owners were ordered to supply the dogs and "comply" with their contracts. (e) The 30 kennel owners were required to file their entries by the following morning, July 4th at 10:00 A.M. (f) Upon the kennel owners' failure to file entries, their dogs (most of which were already located at a facility owned in part by West Flagler) were to be sequestered and a receiver would be appointed to control, enter and race such dogs, his costs and fees to be assessed against the kennel owners. (g) The kennel owners were given eight days to answer the state court complaint. (h) The kennel owners were enjoined from removing any greyhound from the West Flagler facility.

The Petitioners failed and refused to abide by the circuit court injunction. The circuit court scheduled a July 7, 1975, contempt proceeding. Petitioners appeared and stayed at this hearing. On July 7 the Petitioners filed a notice of interlocutory appeal.

The circuit court reheard the State's witnesses and West Flagler's witnesses on July 7 and reaffirmed all orders entered on July 3. Petitioners fully participated in the July 7 hearing by cross-examining witnesses and presenting witnesses of their own. The Petitioners' motions to dissolve the injunction, to dismiss and to quash were denied.

The circuit court then proceeded to hear testimony concerning the civil contempt charges. Twenty of the Petitioners admitted, under oath, their willful violation of the court's injunction. The remaining Petitioners testified and from the proceeding the circuit court judge determined their violations of the injunction were willful. Eighteen of the Petitioners were incarcerated on July 8 and the others were excused due to health. The circuit court imposed compensatory fines of $7,500 per Petitioner for the first day and $2,500 per day thereafter that the Petitioners remained in contempt.

Petitioners then filed an emergency interlocutory appeal in the Florida Third District Court of Appeal on July 7, 1975, and unsuccessfully sought an ex parte stay order of the circuit court proceedings. The Petitioners then successfully sought an ex parte writ of habeas corpus from the Chief Justice, Florida Supreme Court, on July 10, 1975.

On July 14 the Florida Supreme Court ordered the Florida District Court of Appeal proceedings transferred to it. The Florida Supreme Court affirmed the mandatory temporary injunction and contempt orders of the circuit court on July 21, 1975.

Petitioners then filed three interlocutory appeals to the Florida Third District Court of Appeal on August 4, 1975. The three appeals directly involved the validity of the injunction and the contempt proceedings. The District Court of Appeal issued a show cause order to the Petitioners on August 13, 1975 as to why the appeals shouldn't be dismissed. On September 11, 1975, the District Court of Appeal transferred the three interlocutory appeals to the Florida Supreme Court. The three appeals are pending in the Florida Supreme Court on a Motion to Dismiss.

Petitioners then filed, on November 17, 1975, a separate and fourth interlocutory appeal directly involving the validity of the injunction and contempt proceedings. This appeal is pending in the Florida Third District Court of Appeal.

Petitioners now seek review of the Florida Supreme Court's July 21, 1975, decision in this Court - the United States Supreme Court. The same basic issues of due process, involuntary servitude, and jurisdiction are now pending in four different courts.

ISSUES PRESENTED

ISSUE I

Whether the jurisdictional basis mandated in 28 U.S.C. §1257(3) governing review of state supreme court decisions has been met.

ISSUE II

Whether the jurisdictional basis required by Rule 19 governing review of petitions for writs of certiorari has been met.

OPINIONS BELOW

The Florida Supreme Court opinion rendered on July 21, 1975, and its subsequent opinion denying rehearing on July 29, 1975, are reported at 318 So.2d 732 (Fla. 1975).

Petitioners have appended a July 10, 1975, order of the Circuit Court reaffirming its July 3, 1975, order granting a temporary mandatory injunction. This order has not been reviewed or considered by the Florida Supreme Court and is presently pending before the Florida Supreme Court in Wilson v. West Flagler Associates, Ltd., et al., No. 48,062.

JURISDICTION - OBJECTIONS TO

The Respondent, State of Florida, files this brief pursuant to Rule 24(1) in opposition to the Petition for Writ of Certiorari on the grounds that: 1) no basis for review exists by this Court pursuant to 28 U.S.C. §1257(3); 2) no basis for review exists by this Court pursuant to Rule 19; 3) no substantial federal question has been raised. This Court does not have jurisdiction over the Petition for a Writ of Certiorari filed herein.

The issues Petitioners seek this Court to review are now pending before two Florida appellate courts. The Florida Supreme Court has before it for review in Wilson et al., v. West Flagler Associates, Ltd., et al., No. 48,062 three consolidated interlocutory appeals involving the same contempt, due process, and 13th Amendment issues raised here. See App. 5 - 11. Petitioners have again re-

quested the Florida Supreme Court to review the July 8, 1975, contempt order that is before this Court in this case. See, App. 5.

The Florida Third District Court of Appeal has before it for review in Florida Greyhound Owners & Breeders Assoc., Inc., et al., v. West Flagler Associates, Ltd., et al., No. 75-1784, another interlocutory appeal involving the same contempt, due process, and 13th Amendment issues raised here. See App. 18.

ISSUES - ARGUMENT

ISSUE I

Whether the jurisdictional basis mandated in 28 U.S.C. §1257(3) governing review of state supreme court decisions has been met.

Congress has prescribed certain jurisdictional standards for this Court in 28 U.S.C. §1257(3) which require dismissal of this Petition for a Writ of Certiorari:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant

> to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (e.s.)

The decision of the Florida Supreme Court sought to be reviewed is not a final judgment or decree within the purview of 28 U.S.C. §1257(3). The federal question issue of this section is addressed under Issue II, infra, and will not be duplicated here.

A "final judgment" for the purposes of this statute is a restriction upon this Court's limited power to review state supreme court decisions that result in an intrusion upon fundamental concepts of federalism. Review of a state court judgment is precluded "where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has been finally adjudicated by the highest Court of the State." Cox Broadcasting Corp. v. Cohen, 420 U.S. 469 (1975).

This requirement of finality is not a technicality to be scorned for it is designed to avoid piecemeal review, federal intrusion into state affairs, and the mischief of economic waste and delayed justice. North Dakota Pharmacy Bd. v. Snyder's Stores, 414 U.S. 156 (1973). The very issues Petitioners present this Court are now being litigated in West Flagler Associates, Ltd., et al. v. Florida Greyhound Owners & Breeders, Inc., et al., No. 75-20902, 11th Florida Judicial

Circuit, and three combined new interlocutory appeals in Wilson, et al. v. West Flagler Associates, Ltd., et al., Florida Supreme Court, No. 48,062, and Florida Greyhound Owners & Breeders, Assoc., Inc. v. West Flagler Associates, Ltd., et al., No. 75-1784, Florida Third District Court of Appeal. See App. 14 and 18.

For a decision to be "final" it must fully determine the rights of the Petitioners and the fact that a decision leaves open additional constitutional questions militates against its finality. Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 (1948). In this instance, the Petitioners seek review of a temporary mandatory injunction that is today pending before two Florida appellate courts referenced above. The interlocutory decision sought to be reviewed is a far cry from final due solely to the Petitioners' efforts.

This Court has historically refused to intrude into the litigation process of state courts on an interlocutory basis. In Gibbons v. Ogden, 19 U.S. [6 Wheat] 848 (1921) a request to review a decision denying a motion to dissolve an injunction was rejected. E.g. Pepper v. Dunlap, 12 U.S. [51 How.] 46 (1855); Moses v. Mayor, 82 U.S. [15 Wall.] 357 (1872). A decision on an injunction leaves the entire case to be disposed of on its merits while maintaining the status quo to prevent any excessive or unnecessary injury. Georgia R. & Power Co. v. Decatur, 262 U.S. 432 (1932).

This interpretation of "finality" has never been rejected by this Court and was fully elaborated upon in Montgomery Bldg. &

Constr. Traders Council v, Ledbetter Erection Co., 344 U,S. 178 (1952).

> The provision of §1257 that only 'Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . .' has been carried in almost identical language since the Judiciary Act of 1789, 1 Stat 85, §25.
>
> * * *
>
> The distinction between a preliminary or temporary injunction and a final or permanent injunction was elementary in the law of equity. The classical concept was at once recognized and applied in Gibbons v. Ogden (US) supra. There is no room here for interpretation. The rule remains unchanged.
>
> True, as long as a temporary injunction is in force it may be as effective as a permanent injunction, and for that reason appeals from interlocutory judgments have been authorized by state legislatures and Congress. But such authorization does not give interlocutory judgments the aspect of finality here, even though we may have inadvertently granted certiorari. Baldwin Co. v. R. S. Howard Co. 256 U.S. 35, 40, 65 L.Ed. 816, 818, 41 S.Ct. 405.
>
> *It is argued that if this is

> not held to be a final decree or judgment and decided not, it may never be decided, because to await the outcome of the final hearing is to moot the question and to frustrate the picketing. However appealing such argument may be, it does not warrant us in enlarging our jurisdiction. Only Congress may do that. 344 U.S. at 180 - 81. (e.s.)

See also Gospel Army v. Los Angeles, 331 U.S. 543 (1947).

There are, however, four recognized but limited exceptions to this "finality" requirement that recognizes the subtlety that "finality" of an issue is apparent despite the necessity for continued litigation. None of these exceptions are applicable here. Whitus v. Georgia, 385 U.S. 547 (1967); Taggart v. Weinacker's, 397 U.S. 223 (1970).

Most recently, the exceptions were delineated in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), to be "very few" only when "additional [state] proceedings would not require the decision of other federal questions that might also require review by the Court at a later date." The alleged constitutional issues of due process, 13th Amendment, and contempt raised sub judice require further state court deliberations and the same issues are presently pending before the Florida Supreme Court and the Florida Third District Court of Appeal.

The four categories are: 1) when the federal issue is conclusively decided regardless of further "formal" trial proceedings;

2) when the federal issue has been decided and the issue cannot be reviewed later; and 4) when the federal issue has been decided and reversal of the state decision would preclude future trial proceedings. All of these exceptions pertain to situations where the state decision on a federal issue might seriously erode federal or national policy if not immediately reviewed. Moreover, this proceeding rests on a disputed issue of fact that demands further hearings and does not involve coveted First Amendment rights. Organization for a Better Austin v. Keefe, 402 U.S. 415 (1975); Cox Broadcasting Corp. v. Cohen, supra, at 486, n. 13.

The "penumbral area" of the §1257 "finality" concept does not encompass this interlocutory decision of the Florida Supreme Court in Wilson v. Sandstrom, 317 So.2d 732 (Fla. 1975), especially when the same issues are pending before two Florida appellate courts and involve factual disputes deserving further evidentiary resolution scheduled in West Flagler Associates, Ltd., et al., v. Florida Greyhound Assoc., Inc., et al., Florida 11th Judicial Circuit, 75-20902. To grant this Petition would permit an unbearable intrusion into the state judiciary that is clearly forbidden by the jurisdictional limitations placed on this Court.

Moreover, Petitioners carry the keys to a final hearing on a permanent injunction and the necessary further evidentiary hearings that will produce a final and conclusive decision of all factual and legal issues not now before this Court. For reasons known only to Petitioners they have avoided a final hearing that would produce the final results to maintain a forum here that espouses noble but facially and substantively defective

contentions. The Petitioners need only be directed by this Court's statement in Montgomery Bldg. & Constr. Trades Council v. Ledbetter Erection Co., 344 U.S. 178 (1952):

> Furthermore, the interlocutory decree could have been readily converted into a final decree, and the appeal could have proceeded without question as to jurisdiction just as effectively and expeditiously as the appeal from the interlocutory injunction was pursued in this case. 344 U.S. at 182.

The decision presented this Court is not within the purview of 28 U.S.C. §1257(3).

ISSUE II

> Whether the jurisdictional basis required by Rule 19 governing review of petitions for writs of certiorari has been met.

Rule 19 permits review of a petition for writ of certiorari, not as a matter of right, but of "sound judicial discretion" where "special and important reasons" exist. Guidance governing this Petition arising from a state court decision is found in Rule 19(1)(a):

> Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

Petitioners constitutional contentions allegedly involve issues of due process of law, involuntary servitude, and lack of any jurisdiction after removal and prior to remand. These issues do not muster the standard necessary under Rule 19. Rice v. Souix City Cemetery, 349 U.S. 70 (1945).

REMOVAL

The removal provisions of 28 U.S.C. §1446(e) were not violated by the circuit court proceeding to issue a mandatory temporary injunction in this instance. F & L Drug Co. v. American Central Ins. Co., 200 F. Supp. 718 (D. Conn. 1961). The propriety of

a state court proceeding once a petition for removal has been filed in federal court was resolved in Metropolitan Casualty Ins. Co. v. Stevens, 312 U.S. 563 (1941).

In Stevens this Court concluded that a state court could properly proceed after a petition for removal has been filed:

> While the opinion does not expressly consider the effect of a petition for removal on subsequent proceedings in the state court, the clear import of the decision is that the proceedings are valid if the case was not in fact removable.
>
> * * *
>
> The rule that proceedings in the state court subsequent to the petition for removal are valid if the suit was not in fact removable is the logical corolary of the proposition that such proceedings are void if the cause was removable. 312 U.S. at 566.

The Florida Supreme Court merely followed this ruling and Petitioners may not indirectly seek review of the removal order in this manner. This Court must presume that in fact it was not removable.

Moreover, the mere failure to stop the state court proceeding "we cannot say that failure to do so is a denial of a federal right if the cause was not removable." Metropolitan Casualty Ins. Co. v. Stevens, supra,

at 569.

INVOLUNTARY SERVITUDE

There is no doubt that the Thirteenth Amendment to the United States Constitution prohibits "involuntary servitude" as that phraseology has been judicially defined. Jones v. Mayer Co., 392 U.S. 409 (1968). The state decision sought to be reviewed here does not constitute a violation of the Thirteenth Amendment or any of its badges or incidents.

To accept Petitioners' claim would elevate a greyhound to a "person" within the Thirteenth Amendment which is obviously not what the enactors contemplated. The Florida Supreme Court concluded in this manner:

> A greyhound is not a 'person' as provided in the United States Constitution, Amendment Thirteen, §1. 318 So.2d at 738. (e.s.)

Flood v. Kuhn, 316 F.Supp. 371 (S.D.N.Y. 1970), affirmed 407 U.S. 258 (1972) disposed of similar "personal services" contentions concerning performance by a baseball player. The option of not playing baseball, and here of not racing greyhounds, was sufficient to dispell any concern of involuntary servitude:

> We recognize that, under the existing rules of baseball, by refusing to report to Philadelphia plaintiff is by his own act foreclosing himself from continuing a professional baseball career, a

> consequence to be deplored. Nevertheless, he has the right to retire and to embark upon a different enterprise outside organized baseball. The financial loss he might thus sustain may affect his choice, but does not leave him with 'no way to avoid continued service.' 316 F.Supp. at 281.

The state decision recognized the applicability of the Thirteenth Amendment to a personal services contract but factually determined there to be no personal services in these contracts, that the Petitioners were independent contractors, not employees, and that the Petitioners contracted to produce greyhounds at the West Flagler Greyhound Track. The contract, as found by the Florida Supreme Court, permits withdrawal by Petitioners:

> The contracts in question give the kennel owners the right to withdraw dogs providing adequate notice of the reasons for the withdrawal is given to the track. The track cannot arbitrarily refuse the owners' withdrawal or substitutions. It also provides that in the event of the withdrawal of dogs, either the track operator or the kennel owner may pursue any legal or equitable remedy, including a complaint to the State of Florida. 318 So.2d at 739.

The Petitioners' obligation to produce greyhounds to race is no different that a contractual obligation to produce a particular kind of bananas or tomatos which may be

subject to a mandatory termporary injunction. See F.E.C. Railway Co. v. Taylor, 47 So. 345 (Fla. 1908); Kellerman v. Chase & Co., 135 So. 127 (Fla. 1931); Fraser v. Cohen, 31 So. 2d 463 (Fla. 1947); Bowling v. National Convoy & Trucking Co., 135 So. 541 (Fla. 1931); Price v. Gordon, 177 So. 276 (Fla. 1937); Zetrover v. Zetrover, 103 So. 625 (Fla. 1925); State Road Dept. v. Fugoli, 123 So.2d 473 (1 Fla. DCA 1960). The "personal" responsibility of the Petitioners as an independent contractor is very limited. Wilson, et al. v. Sandstrom, et al., 317 So.2d 732, 737 (Fla. 1975). The execution of every contract and every court order requires some "involuntary action" but it does not muster to the level of involuntary servitude.

Pollack v. Williams, 322 U.S. 4 (1944), concerned the criminal prosecution of a person for failure to perform a personal service contract - involuntary labor to discharge a debt - and a statutory presumption of guilt. International Union v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949). Pollack is of no assistance to Petitioners since it presented a person with no alternative to performance of a personal service and a criminal conviction.

DUE PROCESS OF LAW

Petitioners contend that the expedited procedure, in essence, denied them due process of law. Petitioners were the moving parties seeking an emergency appeal to the Florida Third District Court of Appeal and sought an ex parte Writ of Habeas Corpus from the Chief Justice, Florida Supreme Court. If

the contention has merit, Petitioners would be estopped from making their assertions. An expeditious handling of a case is not a synonym for denial of due process. New York Times Co. v. United States, 403 U.S. 713 (1971).

Counsel for Petitioners appeared at the July 3, 1975, hearing and departed on their volition. That their decision was unwise does not make the judicial proceeding illegal. Moreover, the Circuit Court reheard all evidence at a July 7, 1975, hearing at which Petitioners' counsel exercised their discretion to stay. On both occasions Petitioners had a full evidentiary hearing in a timely fashion that, but for their decisions, could have been exercised in a meaningful manner. Although two evidentiary hearings were effectively granted Petitioners, due process does not require two evidentiary hearings. Goldberg v. Kelly, 397 U.S. 254, 256, n. 14 (1970).

Fuentes v. Shevin, 407 U.S. 67 (1972) and its aftermath of Arnett v. Kennedy, 416 U.S. 134 (1974), Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974), and Goss v. Lopez, 419 U.S. 565 (1975), concern pre-termination and ex parte hearings. The cases do not concern hearings at which Petitioners arrive, make statements, and exercise their discretion to leave, and then are accorded another evidentiary hearing. Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961).

The Petitioners attempt to state that none of them were within the jurisdiction of the circuit court. Each of the Petitioners was represented in the circuit court proceedings by counsel of record. Moreover, each testified to their outright defiance of the

injunction order:

> At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975, the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding. 318 So.2d at 735.

The Petitioners' contention that the circuit court lacked jurisdiction is not meritorious and certainly does not raise a substantial federal question.

The counter-balancing danger and irreparable harm to the State's revenue interest [$64,000/day loss], the public confidence in the State's ability to properly regulate this gambling industry, and the lack of alternate racing dates comprises an overriding public interest. Hubel v. West Va. Racing Comm'n., 513 F.2d 240 (5 Cir. 1975); Tappis v. New York State Racing & Wagering Bd., 370 N.Y.S. 2d 922 (Ct. App. 1975). The Petitioners' do not raise any substantial federal question on this interlocutory Petition for a Writ of Certiorari.

The state court decision does not rest on a substantial federal question rather it rests on the existence of factual conclusions and adequate state grounds. This Court is without jurisdiction when the decision, as

here, rests upon state grounds concerning the requirements of a mandatory temporary injunction. Steambridge v. Georgia, 343 U.S. 541 (1952). The same lack of jurisdiction conclusion must be made when whatever federal question might be said to exist is interrelated with state grounds. Duncan v. Tennessee, 405 U.S. 127 (1972); Durley v. Mayo, 351 U.S. 277 (1955).

CONCLUSION

The decision of the Florida Supreme Court sought to be reviewed is not a proper judgment or decree within the jurisdictional prescription of 28 U.S.C. §1257(3). No jurisdictional basis exists under Rule 19 to permit the granting of the Petition for Writ of Certiorari. No federal question or issue exists in this proceeding.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL OF
FLORIDA

COUNSEL FOR RESPONDENT
STATE OF FLORIDA

THE CAPITOL
TALLAHASSEE, FLORIDA
32304

CERTIFICATE OF MAILING

I HEREBY CERTIFY that three copies of the foregoing brief of Respondent, State of Florida, in response to petition for writ of certiorari to the Supreme Court of Florida were mailed to Pettigrew & Bailey, Attorneys for Petitioners, 1820 One Biscayne Tower, Miami, Florida 33131; Hon. Stuart Simon, County Attorney, 1626 Courthouse, Miami, Florida 33130; Sibley, Givlin, Levanson & Ward, Attorneys for West Flagler Associates, Ltd., Post Office Box 390360, Miami Beach, Florida 33139; and Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for West Flagler Associates, Ltd., 150 S.E. 2nd Avenue, Miami, Florida 33131; this 15th day of December, 1975.

ROBERT L. SHEVIN

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

STATE OF FLORIDA ex rel. ROBERT L. SHEVIN, Attorney General of Florida,

Intervenors,

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Defendants.

ORDER

THIS CAUSE having come on this day to be heard upon the Motion of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, for leave of Court to appear as Intervenors, and the Court having received testimony, arguments of counsel and being otherwise and further advised in the premises, it is, upon consideration thereof

ORDERED and ADJUDGED as follows:

1. That the Motion to Intervene of the

Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, is granted.

2. That the Motion of the above Intervenors to be granted status of a party Plaintiff-Intervenor is granted.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 3 day of July, 1975.

s/ Harvie S. DuVal
JUDGE

cc: All Attorneys

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

STATE OF FLORIDA ex rel.
ROBERT L. SHEVIN, Attorney
General of Florida,

Intervenors,

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized
and existing under the laws of the
State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS
ASSOCIATION, INC., a Florida
corporation, et al.,

Defendants.

ORDER

THIS CAUSE having come on this day to be heard upon the Motion of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, for leave of Court to appear as Intervenors, and the Court having received testimony, arguments of counsel and being otherwise and further advised in the premises, it is, upon consideration thereof

ORDERED AND ADJUDGED as follows:

1. That the Motion to Intervene of the Attorney General of Florida, Robert L. Shevin, on relation of the State of Florida, is granted.

2. That the Motion of the above Intervenors to be granted status of a party Plaintiff-Intervenor is granted.

3. That the July 3, 1975 order granting intervention and status as a party-Plaintiff to the above Intervenors is hereby approved, ratified, confirmed and republished as of this July 7, 1975 as an order of this Court.

4. This Order is entered nunc pro tunc as of July 7, 1975.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 28th day of July, 1975.

/s/ Harvie S. DuVal
JUDGE

CC: All Attorneys

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a Limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY, FLORIDA,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., etc., et al.,

Defendants.

ASSIGNMENTS OF ERROR

As to the order of July 8, 1975, Defendants assign as error the following:

1. The order is contrary to the law.

2. The order is contrary to the facts.

3. The trial court erred in denying Appellants due process of law.

4. The trial court erred in requiring Defendants to engage in involuntary servitude.

5. The trial court erred in denying Defendants their right to trial by jury.

6. The trial court erred in prohibiting Defendants from racing dogs outside the jurisdiction of Dade County, Florida.

7. The trial court erred in entering fines without any evidence of ability to pay.

8. The trial court erred in not designating the beneficiary of the fine proceeds.

9. The fines and penalties are excessive and constitute an abuse of judicial discretion.

10. The trial court erred in entering indeterminate sentences.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida 33131

By: Richard A. Pettigrew
Richard A. Pettigrew

I HEREBY CERTIFY that a copy of the foregoing has been mailed this 4th day of August, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 SE 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida, and to James D. Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., et al.,

Defendants.

ASSIGNMENTS OF ERROR

As to the order of July 10, 1975, Defendenats assign as error the following:

1. The order is contrary to the law.

2. The order is contrary to the facts.

3. The trial court erred in denying Defendants' motion to dissolve the temporary mandatory injunction.

4. The trial court erred in refusing to allow Defendants to introduce evidence to contravene the evidence offered by West Flagler.

5. The trial court erred in denying the motion to dissolve the temporary mandatory injunction where Plaintiffs failed to show that they did not have an adequate remedy at

law.

6. The trial court erred in denying the motion to dissolve the temporary mandatory injunction where the evidence before the trial court showed that the services sought to be compelled were personal services.

7. The trial court erred in denying the motion to dissolve where Defendants were not afforded the opportunity for a full and adequate hearing and were not afforded the opportunity to ffer [sic] any defenses to Plaintiff's claim.

8. The trial court erred in denying Appellants' motion to dismiss where Plaintiff failed to annex to its complaint copies of the contracts upon which suit was brought.

9. The trial court erred in denying Appellants' motion to dismiss where the contract on its face is an unenforceable adhesion contract without mutuality of obligation.

10. The trial court erred in denying Appellants' demand for trial by jury.

11. The trial court erred in ratifying and affirming nunc pro tunc, the July 3 mandatory injunction entered following an ex parte hearing.

12. The trial court erred in denying Appellants due process of law.

13. The trial court erred in denying Appellant's the right to be free from involuntary servitude.

14. The trial court erred in denying

Appellants' motion to quash service of process.

15. The trial court erred in denying Appellants motion to dismiss for lack of jurisdiction.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida, 33131

By Richard A. Pettigrew
Richard A. Pettigrew

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 4th day of August, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 SE 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida, and to James Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership, et. al,

Plaintiffs.

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., etc., et al,

Defendants.

ASSIGNMENTS OF ERROR

As to the entry of the July 14 order, Defendants respectfully assign as error the following:

1. The order entered is contrary to the law.

2. the order entered is contrary to the facts.

3. The court erred in denying Defendants' motion to stay the effectiveness of the temporary mandatory injunction pending appeal.

4. The court erred in denying Defendants' motion to set supersedeas bond to stay the effect of the temporary mandatory injunction.

5. The court erred in denying Defendants' motion to set supersedeas bond to stay

the effect of the contempt order of July 8, 1975, pending appeal.

6. The court erred in denying Defendants' motion to enlarge the bond required of West Flagler pursuant to the July 3 mandatory injunction.

7. The court erred in refusing to take testimony as to the sufficiency of the bond required of West Flagler pursuant to the July 3 mandatory injunction.

Respectfully submitted,

PETTIGREW AND BAILEY
1820, One Biscayne Tower
Miami, Florida 33131

By Richard A. Pettigrew
Richard A. Pettigrew

I HEREBY CERTIFY that a copy of the foregoing was mailed this 31st day of July, 1975 to Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida, Attorneys for Plaintiff, and to Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, Attorneys for Plaintiff, 150 S.E. 2nd Avenue, Miami, Florida, as well as to Robert L. Krawcheck, Assistant County Attorney, Dade County Courthouse, Miami, Florida, and to James Whisenand, Assistant Attorney General for the State of Florida, The Capitol, Tallahassee, Florida.

Richard A. Pettigrew
OF COUNSEL

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
WEDNESDAY, AUGUST 13, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
etc., et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Upon motion of appellants, it is ordered that the above styled appeals are consolidated for all appellate purposes.

Counsel for appellant is directed to show cause in writing within ten (10) days from this date why these appeals are not either moot or subject to review by the Supreme Court of Florida in their opinion in Wilson, et al., vs. Sandstrom, etc. Case No. 47674 filed July 17, 1975 ____ So.2d ____.

A True Copy

ATTEST:

William P. Carter
Clerk District Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Robert Krawcheck
Patton, Kanner, Nadeau, Segal, Zeller & LePorte
James Whisenhand
Richard P. Brinker

/pld

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
FRIDAY, SEPTEMBER 19, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Pursuant to this court's order dated September 11, 1975, it is ordered that these appeals are hereby transferred to the Supreme Court of Florida as the proper court having jurisdiction of these matters.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Robert Krawcheck
Fatton, Kanner, Nadeau, etc.
James Whisenhand

Richard P. Brinker
Sid J. White

/h

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
THURSDAY, SEPTEMBER 11, 1975

JACK WILSON, PAT DALTON,
C. R. HOLZSCHUHER, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Appellees.

CASE NOS. 75-1276
75-1277
75-1278

Circuit Ct. #75-20902

After consideration of the responses filed to this court's order dated August 13, 1975 and it appearing to the court that the appeals filed in the above causes are within the jurisdiction of the Supreme Court of Florida, therefore, pursuant to the provisions of the Florida Appellate Rules, it is ordered that these appeals be transferred to the Supreme Court of Florida for consideration and determination after five (5) days from this date unless, in the meantime, the attorneys of record for the parties, or any of them shall bring to the attention of the court that these causes should be heard and determined by this court.

A True Copy

William P. Carter
Clerk Distirct Court of
Appeal, Third District

cc: Pettigrew & Bailey
Sibley, Givlin, Levenson & Ward
Robert Krawcheck
Patton, Kanner, Nadeau, etc.
James Whisenhand
Richard P. Brinker
Sid J. White
/h

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 75-20902 Div. 7 J. DuVal

WEST FLAGLER ASSOCIATES, LIMITED, a limited partnership, organized and existing under the laws of the State of Florida,

Plaintiff

v.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, et al.,

Defendants

ASSIGNMENTS OF ERROR

Defendants who have served assign as error to be relied upon in this appeal, the following:

1. The trial court erred in its Order dated October 17, 1975.

2. The trial court erred in considering out of court statements in the media in finding Appellants guilty of contempt and in using those statements as a basis of its Order.

3. The trial court erred in refusing to take testimony as to Appellants' ability to pay the fines.

4. The trial court erred in awarding fines which are clearly excessive and which are punitive rather than coercive, requiring trial by jury.

5. The trial court erred in failing to identify the beneficiary of the fine proceeds.

6. The trial court erred in compelling Appellants to "honor their contracts" without allowing testimony or evidence of any defenses from Appellants that those contracts were void and unenforceable and that performance of the contract called for personal services, therefore violating the 13th Amendment of the United States Constitution.

7. The trial court denied Appellants' formal rights of due process of law in denying them an opportunity for a fair and impartial hearing before rendering judgment against them.

8. The trial court erred in finding that the State of Florida has suffered damages in the amount of Sixty Four Thousand ($64,000.00) Dollars per day when no evidence supported such a finding.

9. The trial court erred in finding that Appellee West Flagler Associates, Limited, "suffered great loss of money because of the Defendants' defiance" which requires a prior finding that the contract was valid and enforceable.

10. The trial court erred in finding that Appellants were able to pay the fine of Seven Thousand Five Hundred ($7,500.00) Dollars because they advised the Supreme Court that there was no necessity of a bond for

release from jail because Appellants owned Three Million ($3,000,000.00) Dollars worth of racing dogs.

11. The trial court erred in requiring Appellants, for a period of two years, to provide personal services to Appellee West Flagler Associates, Limited, or pay the Seven Thousand Five Hundred ($7,500.00) Dollar fine or be immediately incarcerated. Such a finding without affording Appellants any opportunity to offer any defenses to the contract or to offer any evidence on their behalf is violative of Appellants' fundamental rights of due process of law and is violative of the 13th Amendment of the United States Constitution.

12. The Order is contrary to law.

13. The Order is contrary to the facts.

RESPECTFULLY SUBMITTED,

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By: Eugene E. Stearns
EUGENE E. STEARNS

I HEREBY CERTIFY that a true copy of the foregoing was mailed to SIBLEY, GIBLIN, LEVENSON & WARD, Attorneys for Plaintiff, 1301 Dade Boulevard, Miami Beach, Florida; PATTON, KANNER, NADEAU, SEGAL, ZELLER & LaPORTE, Attorneys for Plaintiff, Northeast Airlines

Building, Third Floor, Miami, Florida; ABRAMS, ANTON, ROBBINS, RESNICK & SCHNEIDER, Home Federal Tower, Hollywood, Florida 32202; FRATES, FLOYD, PEARSON, STEWART, PROENZA & RICHMAN, Twelfth Floor, Concord Building, Miami, Florida 33130; G. KENNETH KEMPER, Suite 200, 9999 N.E. Second Avenue, Miami Shores, Florida 33138; SMATHERS AND THOMPSON, 1301 Alfred I. duPont Building, Miami, Florida; MESSRS. JOHN A. RUSH and ARTHUR T. BOONE, 404 Florida Theatre Building, Jacksonville, Florida; ALLEN, DELL, FRANK & TRINKLE, P. O. Box 2111, Tampa, Florida 33601; ROBERT L. KRAWCHECK, Assistant County Attorney, Dade County, 1626 Dade County Courthouse, Miami, Florida 33130; and JAMES WHISENAND, Assistant Attorney General, State of Florida, The Capitol, Tallahassee, Florida, this 17th day of November, 1975.

Eugene E. Stearns
EUGENE E. STEARNS